

# POLITICAL SCIENCE AND GOVERNMENT





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# PRINCIPLES OF POLITICAL SCIENCE AND GOVERNMENT

BY

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To

JOGESH CHANDRA CHAKRAVARTI, M A

Registrar, Calcutta University,

In token of grateful regard and

esteem for his deep erudition

and high administrative

ability



## PREFACE TO THE FOURTH EDITION

The world is passing through the most momentous crisis of its history. A revolution is transforming the social, economic and political life of men, and it promises far to surpass in its effects the Industrial Revolution, and the American and French Revolutions. Problems of efficient government and equitable distribution are puzzling the minds of thinkers and men of action in all the Civilised Countries. In this atmosphere of stress and strain I have found it necessary to examine in this edition more critically the principles of Liberal Democracy, of Individual Rights, the Doctrine of Self-determination and the rights of Minorities. Separate Chapters have been devoted to each of the Dominions to meet the requirements of some of the Indian Universities.

It has not been found practicable, nor desirable to give an account of the system of government set up by the Nazis in the countries conquered or subjugated by them. The accounts of governments in Continental Europe refer to the period before the fall of France.

I owe a deep debt of gratitude to Professors Dr A. B. Keith of Edinburgh University, Dr Beni Prasad of Allahabad University, Dr V. Shiva Ram of Lucknow University, Dr Bool Chand of Delhi University, Dr B. B. Das Gupta of Ceylon University, Dr. A. Appadorai of Madras, Prof C. I. Philip of Madura, Prof S. L. Bahl of Rawalpindi and to Prof L. M. Pylee of St. Berchmans' College for the valuable suggestions they have given me in bringing out the book in its present form. My son, Bhakat Prasad Majumdar has prepared the Index. Though meticulous care has been taken to remove the defects of earlier editions, I can not claim that the present edition is free from errors of omissions and commission, and especially from printing mistakes. I can only crave indulgence from the learned readers by reminding them that "Who faulteth not, liveth not, who mendeth faults, is commended."

Bankipore,  
Patna.

Biman Behari Majumdar

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# POLITICAL SCIENCE

## INTRODUCTION

### SCOPE AND NATURE OF POLITICAL SCIENCE

#### I. Scope of Political Science

Political Science is a study of society viewed from a special standpoint. Mankind is regarded in it as organized political units. Aristotle, the father of Political Science, truly observed, that "man is by nature a political animal." The gregarious nature of man, the economic advantages of co-operation as well as necessity for defence or attack brought the State into existence. "The State originated in the bare needs of life", says Aristotle, "and continued in existence for the sake of a good life." Burke in his "Reflections on the French Revolution" observes that the State "is to be looked on with reverence, because it is not a partnership in things subservient only to the gross animal existence of a temporary and perishable nature. It is a partnership in all science, a partnership in all art, a partnership in every virtue and in all perfection. As the ends of such a partnership cannot be obtained in many generations, it becomes a partnership not only between those who are living, but between those who are living, those who are dead, and those who are to be born."

The first object of Political Science is, therefore, to investigate into the nature of the state as the highest political agency for the realization of the common ends of society and to formulate the fundamental principles of state life. As such it must analyse the nature of the state, its organization, its relation to the individuals that compose it, and its relation to other states. These fundamental concepts of State can be determined only from a consideration of the actual world of states. Wherever there is a community, there must be some form of government which would exercise control and to which the bulk of the community would render obedience. The character of the controlling authority, its form and organization has varied from age to age, from country to country.

The second object of Political Science is, therefore, to enquire



into the origin and development of political forms. The varying forms of human organisation in which the element of social control is embodied are to be examined and analysed. Hence the brilliant German writer, Treitschke, says, "First, it (Political Science) should aim to determine from a consideration of the actual world of states the fundamental concepts of state, second, it should consider historically what the people have chosen, what they have created and what they have attained in political life, and the reasons." Our study should be comparative and political. Hence Dr Leacock observes, "the investigation of political science must be of a dynamic and not of a static character." It should not confine itself to a catalogue of the various forms of state which have existed, or to a description of the manner in which political institutions work. Political science does not accept the existing order as a finality. It does not regard the present condition as static or stationary. It can never reach final conclusions, because the environment in which we live is constantly being changed.

From a consideration of historical facts regarding the origin and development of the state and descriptive analysis of the existing political forms Political Science should deduce, as far as possible, the laws of political growth and development. It should also undertake the politico-ethical discussion of what the state should be. It should determine historical laws and moral imperatives. It should formulate the principles which should control the administration of political affairs and determine the proper province and functions of government.

Political Science consists, therefore, of three main subdivisions — (1) it is an analytical study of what the state is, (2) it is a historical investigation of what the state has been and (3) it is an ethical discussion of what the state should be. Corresponding to these three subdivisions, marked by Gettel, are the "three great topics with which Political Science has to deal, state, government, law," as observed by Willoughby. As our concept of the State is changing with the assumption of ever-increasing functions by it, the scope of Political Science is also being widened. It is now agreed that the subject-matter of Political Science is not only the State, but all forms of association in which men unite to avert common perils and serve collective needs.

## II. Utility of Studying Political Science

Political Science, being a part of the study of man, throws important light on the nature of man, acting in co-operation

with his fellowmen within a community. The object of all knowledge is to know Man. As political science reveals the nature of man living in political society, it leads to the knowledge of the Self.

The discussions regarding the nature of the state, principles of political obligation, comparative merits of different forms of government etc., are highly useful for training the intellect.

But the highest object of studying Political Science is neither to acquire metaphysical knowledge, nor to train a man in intellectual jugglery. Its aim is to better the lot of man by helping him to realise his political rights and obligations, by training the politicians into the art of statesmanship and by indicating the signs of transition of the national country-state into the world-state.

Another great object of the study of Political Science is to formulate a system of ideas which will warn people against the danger of bad doctrines. It is necessary to remember constantly that institutions, whether political, economic or religious, exist for men and not men for institutions. If any set of doctrines declare that slavery is good for civilization, it is to be regarded as more dangerous than deadly poison. "It is of the nature of states, as of men," writes R. H. Tawney, "to yield to the temptation to oppress, rob, and murder." It is not the mere commission of these crimes which is the symptom of the approach of spiritual death; it is the assertion that, when committed for the advantage of the British Empire, the Nordic Race, the Catholic Church, or the International Proletariat, they are not crimes but virtues. In the collective affairs of mankind, bad doctrines are always and everywhere more deadly than bad actions. The latter are the sins of the wicked, the former of the good. The latter destroy life, the former make it not worth while to live. In that sense, knowledge is virtue, and the Scriptural admonition, "Fear not them that kill the body, but them that kill the soul," is profound political wisdom.

Realisation  
of better  
life

A safeguard  
of liberty

### III. The Name of the Science

Aristotle used the term "Politics" as the title of his study of the state. Modern writers like Jellinek, Janet, Cornwall Lewis and Pollock have retained the term used by Aristotle, but have divided it into two branches—Theoretical <sup>The term</sup> Politics and Practical or Applied Politics. Theoretical Politics, according to them, deals with the fundamental characteristics of the state, such as the origin, nature, attributes and ends of the state, and the principles of political organisation and administra-

tion Practical Politics, on the other hand, is concerned with the actual administration of the affairs of government Pollock, for example, has given the following classification of the scope of Theoretical and Applied Politics —

| Theoretical Politics  | Applied Politics  |
|---|---|
| A Theory of the state (origin, classification, forms, sovereignty)  | A The state (existing forms)  |
| B Theory of government (institutions, departments, order, defence, taxation, Positive Law)                        | B Government (constitutional law and usage, parliamentary systems, army and navy, currency and trade) |
| C Theory of legislation (objects, general jurisprudence, method and sanction, interpretation and administration). | C Laws and legislation (procedure, laws, courts, precedents, etc)                                     |
| D. Theory of the state as an artificial person (corporations, international law)                                  | D The state personified (diplomacy, peace and war, treaties, conventions, etc)                        |

This division is useful and covers the whole field of Political Science But the term "Politics" is objectionable owing to its ambiguity The term Politics is derived from the Greek word Polis, meaning a city, and Aristotle's "Politics" is, from the modern standpoint, little more than the science of municipal government More important than this is the fact that the term, Politics, now-a-days refers to the current problems of government, such as, the extent of control exercised by Germany over France, invasion of Indo-China by Japan, acceptance of office by the Congress Party, release of political prisoners in India, division of the Congress into the Rightist and Leftist groups etc The term Politician does not mean a student interested in the study of nature of the state, but one who is interested in promoting his personal or party aims

### Political Science and Political Philosophy

The term "Political Philosophy" has been suggested as a proper designation by some able writers The majority of writers, however, have accepted the term "Political Science" Some writers have tried to draw a line of distinction between Political Science and Political Philosophy They argue that the task of Political Philosophy is to analyse, classify and form judgments upon the essential attributes of the state, while the object of Political Science is to supply the results of logical thinking upon the nature and forms of concrete political institutions According to these writers Political Philosophy is concerned with generalisation, and Political Science with particulars They hold that the fundamental assumptions of Political Philosophy are the bases of Political Science. A few writers are of opinion that Political Science is concerned with what the state ought to be, and Political Philosophy with the state as it actually is

Majority of writers, however, maintain that Political Philosophy, being concerned with theories only, should form a part of the Political Science, which deals both with theoretical and practical Politics

Political Science a more comprehensive term

The French writers are fond of the term, "Political Sciences" They maintain that each class of particular phenomena of the state, such as Political economy, Public finance, Public law, Diplomacy, Constitutional history, is Political Science But the term "Political Science" is more appropriate in as much as the Sciences mentioned above are rather co-ordinate Social Sciences than independent Political Sciences

Political Sciences

#### IV. Is Political Science really a Science ?

Aristotle described "Politics" as the master Science But Auguste Comte in his "Positive Philosophy" denied the claim of "Politics" to be ranked as a science on three grounds viz.,— (1) that its writers differ as to its methods of principles and conclusions, (2) that there is no continuity in its development, and (3) that it fails to supply materials out of which hypotheses may be built up

The function of science is classification of facts and recognition of their sequence and comparative significance Facts relating to the state are studied from history and observed in daily life, they are co-ordinated, systematised and classified by the students of our subject They apply the scientific methods to its study and deduce laws and principles from the mass of classified materials These laws, again, might be applied for solving concrete problems of the state So the rank of science ought not to be denied to our subject-matter

Its claim to be a science

But at the same time it must be observed that it is an incomplete science As it deals with man, the most variable of all animate beings, its conclusions can not be stated with the same precision and exactness as is possible in the case of Physical Sciences Natural processes and human efforts are constantly changing the environment which furnishes the background of Political Science In this changing world there can hardly exist any political theory which may be true for all time under all circumstances The postulates of liberal democracy which were held to be eternal and universal up to most recent times are now being questioned in many quarters But the whole material universe is in process of constant change and as this fact does not invalidate the claim of other social sciences to be regarded as science, it should not stand in the way of Political Science being treated as a science In every branch

Its limitations

of science we can plan, direct and control only so long as our environment does not change too rapidly or too violently

Political Science is both a science and an art with certain limitations. An art gives practical direction of doing a certain thing in a particular way. A close study of Political Science furnishes an excellent training to those who want to become politicians. Without such a training it would be difficult for a person to become a good legislator or administrator.

## V. The Methods of Political Science

Regarding the methods of enquiry in Political Science an eminent writer has observed that the investigations of Political Science must be of a dynamic and not of a static character. The static character of investigation is content with analysing the status and structure of the state as it is at any given point of time. But such an analysis can not warrant us any safe conclusion regarding the basis of Political life of the future. The state is the product of social, cultural and economic environment. It is undergoing an unceasing change in accordance with the alterations in environment. A student of Political Science, therefore, should attempt at the proper interpretation of these alterations, he should notice the changes and their effects, analyse the existing institutions, and observe the tendencies of the movements. He should not only deal with the state as it is, but as it has been in the past, and as it should be in the future. That is what is meant by the dynamic character of investigation.

Such an investigation can be undertaken mainly with the help of methods, known as comparative and historical. The comparative method has been used by Aristotle, who is said to have collected information about 158 constitutions from which to draw his theories, by Montesquieu, who applied himself to the study of political institutions belonging to societies of different historical types, and by Maine, the author of 'Ancient Law'. The comparative method comprehends the six following logical processes—accumulation, arrangement, classification, co-ordination, elimination and deduction. By using these processes we sift out what is common, and try to find out common causes and consequences. If we find that under certain circumstances, a certain institution occurs in the history of a large number of societies, we may expect that under similar circumstances it will probably occur in others also, though we may not have direct evidence of its actual occurrence.

The comparative method, however, is to be used with great

caution In our effort to discover general principles we must take into account the difference in moral, social, intellectual and economic condition of the two entities compared Comparison between two communities having different economic backgrounds cannot give any satisfactory and scientific conclusion

Limitations  
of the meth-  
od

The historical method is really a particular form of comparative method We can use historical facts only when we subject them to the processes of comparative method Historical facts, taken at random, can not lead to any conclusion According to Pollock, the historical method "seeks an explanation of what institutions are and are tending to be, more in the knowledge of what they have been and how they came to be what they are, than in the analysis of them as they stand"

Historical  
method

It is neither expedient nor always possible to adopt the experimental method in Political Science New condition can not be arranged for introducing new laws and institutions for the sake of satisfying the speculative curiosity of learned academicians But as a matter of fact, every government is making new experiments when it is adopting a new policy and enacting a new law Students of political science may draw their own conclusions by watching the good or bad effects of these new laws This process, thus becomes akin to the historical method

Difficulties  
of experi-  
menting

The comparative and historical methods are methods of induction But in Political Science the inductive method is to be used in conjunction with the deductive method The Deductive or Philosophical method has been used by Rousseau, Mill, Sidgwick and Bluntschli A student of this method starts from some abstract original idea about human nature, and deduces from that idea the nature of the state, its aims, functions, and possibilities These theories are then harmonised and verified in the light of facts of history The right method in Political Science, is then, a blending of Comparative and Philosophical Methods

Deductive  
method

Combina-  
tion of  
methods

Mill discussed four methods of investigation viz —the chemical or experimental, the geometrical or abstract, the physical or concrete deductive, and the historical He rejected the experimental method on the ground that the ideal conditions of the laboratory can never be obtained in Political enquiry As circumstances can never be repeated, we can only judge of what has actually happened, and not venture into the region of "what might have been." The geometric or abstract method draws

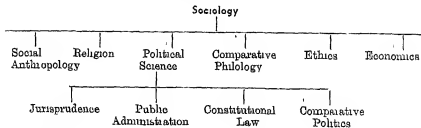
Different  
points of  
view in  
studying  
Political  
Science

inferences from some supposed axioms and does not care to verify them with historical facts. So this is of little value to a student of Political Science. Mill advises the use of the concrete deductive (which is almost the same as Philosophic) and the historical methods.

Many modern writers have undertaken the scientific study of the state from different points of view—such as Sociological, Biological, Psychological, Anthropological and Juridical. These writers do not employ new methods of investigation, but try to explain Political phenomena from the standpoint of their respective sciences and apply the laws and theories of these sciences to the interpretation of the state. So it is a mistake to say that there is sociological method or biological method of studying Political Science.

## VI. The Relation of Political Science to Allied Sciences

Political Science being the study of society from a particular standpoint, is closely related to other social sciences. Sociology is the name given to the study of all forms, civilised and uncivilised, of human association. As such it may be said to be the root of all social sciences such as Political Science, Economics, Social Anthropology, Religion, Ethics and Comparative Philology. Political Science again, is the parent of the sciences of Jurisprudence, Constitutional Law, Public Administration and Comparative Politics. This inter-relation of subjects may be shown by the following diagram.—



Sociology or the science of society deals with man in all his social relations. Its scope is so wide as to include legal and coercive relationship of man with his fellows, as well as the evolution and status of customs, manners, religion and economic life. Political Science is only that part of Social Science which treats of the foundations of the state and of the principles of Government.

Political Science is much narrower in scope than Sociology. The social relations with which Sociology is concerned may be

religious and commercial and as such world-wide in scope Political Science regards mankind as divided into organised political societies, each with its own Government. Prof Dunning points out that the entire field of primitive institutions, which do not manifest a political consciousness should be left to Sociology, while those institutions and theories which are closely associated with manifestations of political consciousness should fall within the scope of Political Science. Thus Political Science "begins much later with the life of the race than does Sociology" Sociology and Political Science are contributory to each other. Political Science draws its knowledge of the origin of political authority and the laws of social control from Sociology, while the latter derives its knowledge of organization and activities of the state from the former.

Political  
Science  
begins much  
later than  
Sociology

A large part of the groundwork of Political Science is to be found in History. History of political institutions is a main branch of Political Science. History also furnishes to a large extent the materials for comparison and induction to a student of Political Science. Hence Lord Acton said—"The science of politics is the one science that is deposited by the stream of history like the grains of gold in the sands of a river." Political Science, in its turn, has much to give to History. With the help of Political Science History arrives at abstractions and laws. History would, therefore, lose much of its significance without at least an unconscious political science. History and Political Sciences are mutually contributory and complementary. "Politics are vulgar", said Seeley "when not liberalised by history, and history fades into mere literature when it loses sight of its relation to politics." The relation between the two subjects is expressed in the famous couplet—

History  
furnishes  
materials to  
Political  
Science

History without political science bears no fruit,  
Political science without history has no root

But not all history is past politics. Though history and politics are mutually interdependent, yet it would be wrong to say with Prof Freeman that history is past politics or that politics is present history. History is a record of past events and movements and then causes and inter-relations. We have "histories of everything from civilisation to coinage—histories of church doctrines, military tactics, language, painting, prostitution, and even of the devil." It would be absurd to maintain that such "history" is "past politics."

Points of  
difference

As all history is not past politics, so all politics is not present history. Political Science is based not only on History but



also on ethical and psychological foundations. The abstract speculations regarding the nature of the state can not be regarded as History. Using the logical terminology of Prof Leacock, we conclude, therefore, that "some of history is part of political science, the circles of their contents overlapping an area enclosed by each."

Political Science is both narrower and wider than History

Some writers are of opinion that the principal problem of Political Science is to determine what ought to be so far as the constitution and functions of government are concerned, while history is concerned with what has been.

The earlier writers of Economics considered their subject as a branch of the general science of the state. The modern writers, however, think that economics and politics are two independent but auxiliary social sciences. The fundamental bases of the two sciences stand in close relation to one another. Economics is concerned with the man's social activity in production, distribution and consumption of wealth. But production and distribution are largely conditioned by the existing form of government.

The system of production and distribution in Russia is fundamentally different from that prevailing in England, because in England government protects and sanctions

private property, while the Soviet Government does not. Conversely, political institutions are greatly affected by economic circumstances. The transition from monarchy to aristocracy or oligarchy is largely due to the growth of wealth amongst the nobles. The destruction of oligarchy and the growth of proletarian democracy may be traced to the Industrial Revolution and the appearance of the artisan class. Besides this similarity in fundamental bases, there are some specific subjects of inquiry which are common to both, such as taxation, currency, tariff, municipal or government ownership of public utilities etc.

Ethics deals with individual morality while Political Science deals with political morality or rights and obligations having political sanction. But both took their origin from custom and religion when men lived in groups. Later on, when civilisation developed, Ethics depended on social sanction, and Politics on

political sanction. But even now the relation between the two sciences is very close. "Moral ideas", observes

Gettel, "when they become widespread and powerful, tend inevitably to be crystallized into law, since the same individuals that form social standards are those that comprise the state." Moreover, so far as Political Science deals with government, as it ought to be, it depends on Ethics to a large extent. The ultimate justification of the State lies in the fact that it promotes good life, and what is good life is to be judged from the ethical stand-point.

Close relation with Ethics

Social Psychology "is the science of the behaviour of the human animal in his social relationships." As Politics is concerned with the play of individual minds, whether of the rulers or of the ruled, it is partly psychological Jurisprudence, Constitutional Law and Public Administration are but sub-divisions of Political Science, because the scope of the subjects fall within the jurisdiction of the science that attempts a complete explanation of state existence and activities

Relation  
with Social  
Psychology  
and Law

There is some difference of opinion regarding the relation of International Law to Political Science. One school of writers regards International Law as a branch of Jurisprudence, which is itself a subdivision of Political Science. Another school thinks that as it deals with the relation of states with one another, it should be regarded as a kindred subject. Leacock opines that "in measure as international relations develop in the fixity of a true international law,—a code enforced by a recognised authority—so does international law become merged in the domain of political science."

International  
Law is  
not yet merged  
in Political  
Science

## CHAPTER I

### NATURE OF THE STATE

#### I. Definition and Essential Characteristics of the State

Political Science, being the science of the State, must offer a clear and precise definition of the term State. It is all the more necessary because the term is popularly used with considerable latitude. In phrases like "state aid to the poor," "state control of railroads or education" the idea of collective action of society through some special machinery as contra-distinguished from individual action is implied. In states having federal system of government, the term state is used to designate both the federal union and its component parts.

Every writer of Political Science has offered a definition of state, but any two definitions seldom agree with each other. We shall therefore first of all discuss the essential characteristics of the state and then accept the definition which brings forward these essentials in the best possible way.

The state must be composed of the following factors —

|                                      |                 |   |      |             |
|--------------------------------------|-----------------|---|------|-------------|
| Four essential constituents of State | Physical bases  | { | I    | Territory   |
|                                      |                 |   | II   | Population  |
|                                      | Political and   | { | III. | Government  |
|                                      | Spiritual bases |   | IV   | Sovereignty |

Population, Territory, Government and Sovereignty—these four are "the essential constituent elements, political, physical, and spiritual of the Modern State."

Without territory there can be no state, in the modern sense of the term. In the primitive age, the pastoral tribes, having some kind of unity and organisation moved from place to place. These can be hardly called states, because the idea of territorial sovereignty is firmly imbedded in present political thought. The Jews, under the influence of the recent Zionist movement, have got some sort of unity and organisation, but as they are scattered all over the world, they can not be said to have formed a state. There is no fixed limit, however, to the area over which the state should extend.

Population is the first essential requisite of a state. An uninhabited portion of the earth can not be called a state. No limit can be laid down regarding the number of people a state should have. Population

As Prof Gilchrist has said, "Government is the organisation of the State, the machinery through which the State Will is expressed." A people settled on a definite portion of earth's surface can not form a State without some political organisation to which they render habitual obedience. The Government is that agency through which collective will of the State is expressed and enforced. Prof Gidings has rightly observed that the State is the "chief progressive organisation of civil society." Government is the outward manifestation of the State, and as such is the organisation for the common purposes of the people. Government

It is the element of Sovereignty, which differentiates the State from all other social organisations. Sovereignty means supremacy. The State is supreme both externally and internally. It does not admit the right of any other body or association to exercise the power of sovereignty within its territory or even to share with it the exercise of that power. Sovereignty

The state may be now defined. President Wilson offers the briefest possible definition — "A state is a people organised for law within a definite territory." This definition implies all the four essential elements of the state. Population, territory and organisation are explicitly mentioned and the term law implies sovereignty. The best definition, however, is that offered by Prof Garner, because his definition clearly brings forth the physical, political and spiritual bases of the state. Definition of State

Prof Garner says — "The State, as a concept of Political Science and public law, is a community of persons more or less numerous, permanently occupying a definite portion of territory, independent or nearly so of external control, and possessing an organised Government to which the great body of inhabitants render habitual obedience." From this definition the constituent elements of the state appear to be following — first, a group of persons acting together for common purpose; second, the permanent occupation of a definite portion of earth's surface which constitute the home of the Population, third, complete or almost complete independence of foreign control. This third element requires some elucidation. We have shown above that complete independence of foreign authority is an essential characteristic of the state. But the League of Nations has recognised the British Dominions A comprehensive definition

of Canada, Australia and South Africa as states, though the British Parliament is legally sovereign over each of them. The measure of control, exercised by the British Parliament is so small that the Dominions are nearly independent. So Prof Garner has widened his definition of State in order to make it tally with the decision of the League of Nations. The fourth element, noticed by him is a common supreme authority or agency through which the collective will is expressed and enforced.

Territory and population constitute the Physical bases of the state. Independence and common supreme authority form its Political basis. The presence of a common purpose amongst the population and the expression and enforcement of collective will through the common supreme authority supplies the spiritual or ethical basis of the state.

The United States Supreme Court defined in *Chisholm vs Ga* case that a state is "a body of free persons united together for the common benefit, to enjoy peaceably what is their own and to do justice to others". This definition would admirably suit a Joint Stock Company. A body of free persons may mean a number of persons having civil rights. Even if it means persons, independent of control of others, the definition falls short of scientific precision, because it does not mention territory and because it denies the title of State to Rome and to the Marhatta State of the eighteenth century, which set before it the aim of forcibly enjoying what belonged to others.

Prof MacIver offers the following definition — "A state is the fundamental association for the maintenance and development of social order, and to this end its central institution is endowed with the united power of the community". This definition might cover a pastoral society, which found a bond of union in the patriarch who in some way, discharged the powers of Government. Such a society, however, lacks territoriality, which is an indispensable condition of true political organisation.

The definition offered by Holland suffers from the same defect. He writes — "A state is a numerous assemblage of human beings, *generally* occupying a certain territory, amongst whom the will of the majority or of an ascertainable class of persons is, by the strength of such a majority or class, made to prevail against any of their number who oppose it". By prefixing the word "*generally*" before "territory" he means to say that there may be a state without territory.

Hegel defined the state as "the incorporation of the objective spirit." Pufendorf conceived it to be "a moral person endowed with a collective will." These two definitions emphasise only the spiritual and moral character of the state to the neglect of its physical and political elements. The term 'State' is loosely used in some cases. The so-called Indian states such as Hyderabad, Kashmir, Baroda, Indore do not possess sovereignty in as much as their foreign policy is entirely under the control of the British Indian government. The interference of the Viceroy in the internal administration of the Indian states is not also unusual. Hyderabad and other so-called states are called states only by courtesy. Then again, the component units of the United States of America, such as New York are not truly speaking states, because they do not possess sovereignty.

Position of  
Indian  
states

## II. Physical Basis of the State

The greater portion of this book will be devoted to the explanation of political and ethical bases of the state. Now we take this opportunity to discuss the physical basis of the state. Territory and population, Nature and Man, constitute the physical basis of the State. For the sake of convenience we shall take up in this section the consideration of the influence of territory on the origin and development of political institutions. The word territory is used here in the sense of physical environment.

The physical environment may be subdivided into (1) the contour of the earth's surface; (2) climate; (3) natural resources; (4) general aspect of nature. Each of these exercises tremendous influence on the social and political institutions of man. But man has also power to resist and overcome these influences.

Physical  
environment

The physical features of the world have marked off certain areas definitely as political units. The sea gives this political unity to Great Britain, the Alps to Italy, the Pyrenees to the Spanish Peninsula, the Himalayas to India. Where there is no such natural frontier, there we notice a continual source of war and unrest. The age-long rivalry between France and Germany regarding the Rhine frontier is a case to the point. The size of the state too depends largely on geographical condition. Nature intended Greece and Switzerland to be seats of small states, while the Russian plain, the Chinese river valleys and the basin of the Mississippi are seats of states of vast extent. The outward expansion of state is sometimes influenced by the

Contour of  
the earth's  
surface

contour of the territory of the state Thus, Greece, with good harbours and numerous islands in the east first came in conflict with Persia and ultimately expanded towards the east

Climate Extreme cold or extreme heat is not favourable to the growth of a state All great states have arisen in areas where a temperate climate and moderate amount of moisture are to be found

Resources The areas where the horse, the cow and the sheep were found in plenty, became seats of pastoral people. Only where the soil and climate were adapted to agriculture, men gave up the nomadic or semi-nomadic life and settled down permanently in one place With the fixity of habitation began the organisation of political life The transition from agricultural to industrial conditions has been largely due to the presence of minerals, and especially coal and iron The modern political predominance of England, Germany and the United States has been made possible by the presence of mineral wealth

General aspects of nature The violent and terrible aspect of nature makes man depend more on imagination than on reason, lacking self-reliance he turns for protection to a powerful man Thus despotism is said to be a normal feature of a country, where great mountains, mighty rivers, earthquakes, volcanoes form the background of human life Where there is no such awful phenomenon, moderation, reason, individualism are said to be developed and men adopt democratic form of government

Limitations of the influence But the claims of geographic influence are not certain and absolute Awful aspect of Nature is said to contribute to despotism, but Wordsworth voices the popular belief that love of freedom is associated with the sea and the mountains

"Two voices are there, one is of the sea,  
One of the mountains, each a mighty voice  
In each from age to age thou did'st rejoice,  
They were thy chosen music, Liberty!"

Nothing succeeds like success Today the people of Europe and the United States of America have acquired ascendancy in almost every sphere of life, and they are eager to prove that nature intended them to be supreme Similarly, twenty-three hundred years ago the Greeks thought that they were the only people whom nature had intended to make supreme over others. Thus wrote Aristotle.—"Those who live in a cold climate and in Northern Europe, are full of spirit, but wanting in intelligence and skill, and therefore they keep their freedom, but have no

political organisation, and are incapable of ruling over others. Whereas the natives of Asia are intelligent and inventive, but they are wanting in spirit, and therefore they are always in a state of subjection and slavery. But the Hellenic race, which is situated between them, is likewise intermediate in character, being high-spirited and also intelligent. Hence it continues free, and is the best preserved of any nation."

The famous English writer, G. K. Chesterton, has shown that the influence of geographic environment may be pushed to absurdity. He writes — "Thus Spaniards (it was said) are passionate because their country is hot, Scandinavians adventurous because their country is cold, Englishmen naval because they are islanders, Switzers free because they are mountainous. It is all very nice in its way. Only unfortunately I am quite certain that I could make up quite as long a list exactly contrary in argument, point-blank against the influence of their geographical environment. Thus Spaniards have discovered more continents than Scandinavians, because their hot climate discouraged them from exertion. Thus Dutchmen have fought for their freedom quite as bravely as Switzers, because the Dutch have no mountains. Thus pagan Greece and Rome and many Mediterranean peoples have specially hated the sea, because they had the nicest sea to deal with, the easiest sea to manage." We may add to this that modern science is making rapid conquest over nature and so the influence of geography may be counter-acted to a large extent.

*Chesterton's criticism*

### III. State and Government

We have discussed the essential attributes of the state. Now, it is necessary to define and discuss some concepts, without an understanding of which the activities of the state can not be described.

In order to understand some of the most fundamental questions of Political Science, it is first of all necessary to distinguish the State from Government. Failure to recognise this distinction has led to grave errors in the past. The term State is an abstract one and it is possible to conceive of it apart from the existence of any particular state because all states are alike in essence. But the term "Government" is a concrete one and its forms vary according to the political conditions prevailing in each state. The State is the sovereign community, politically organised, while Government is the agency or organisation through which the Will of the state is expressed and realised. The State possesses sovereignty, while Government enjoys derivative power delegated to it by the state through its

*Distinction between State and Government*



constitution The term "government" is narrower than the term "state" All the citizens of a political community constitute the state but not the government Territoriality is an essential attribute of the state, but the term government has no reference to it The state possesses quality of permanence but government is not immortal Changes in the form of government from monarchy to oligarchy or democracy either by revolution or constitutional evolution do not put an end to the state - But without some kind of government no state can exist even for a short time It is the government which carries out the function of the state The state is, in its daily administration simply the government As there are different classes and economic interests in the state, the government may lie at the disposal of some one class or interest Frequent struggle goes on between one section and another for the capture of governmental power

In popular signification, Government means a special body of ministers in England, or in the provinces in India But in the wider sense, Government means the sum total of all the legislative, executive and judicial bodies in the central, provincial, local or colonial field It must have, therefore, military power, or the control of armed force, legislative power or the means of making law, financial power or the ability to extract sufficient money from the community to defray the cost of defending the state and enforcing the law it makes In its widest signification the term Government must include the electorate too. "When the electorate, through the suffrage, chooses Governing officials, it is exercising the executive power of appointment, by means of the Initiative and Referendum it shares in legislation; and by jury service it becomes a part of the Judiciary" (Gettel) It must also include the group of officials known as the administration and the special organs, which are entrusted in some states with the task of amending the constitution

✓We may now define Government, in the language of Dealey as "the sum total of those organisations that exercise or may exercise the sovereign powers of the state"

Definition  
of Govern-  
ment

#### IV. State, Community, Society, Association and Institution

According to scientific terminology, Community is the widest of the terms used in the heading of this section Every developed Community gives rise to an organised society Within an organised society there exists a vast complex of Associations, Institutions and Social Customs The state is a particular form of Association.

The term 'Community' has been defined by G D H Cole as "a complex of social life, a complex including a number of human beings living together under conditions of social relationship, bound together by a common, however constantly changing, stock of conventions, customs and traditions, and conscious to some extent of common social objects and interests" MacIver treats of Community and its network of associations as purely spiritual entities expressing relations of wills

✓ A Community is not an institution or formal association but a centre of feeling. The feeling of unity makes it easy for the members of a Community to associate themselves together for the various purposes which they have in common

Society may be defined as "the complex of organised associations and institutions within a Community". A society is any association of human beings. The following points of distinction between state and society may be noted. ✓ A society has no reference to territorial occupation, while territoriality is an essential mark of state. ✓ The term society suggests not only the political relations by which men are bound together, but the whole range of human relations <sup>Society</sup> and collective activities. ✓ In dealing with man, the significance of 'society' is much wider than that of 'state'. State is a form of social association, but society can not exist without the state, because society—made up of families, clubs, churches, trade unions etc—can not be trusted to run itself at present without an organisation for maintaining law and order with the help of force

The basis of association is the consciousness of a want requiring co-operative action for its satisfaction. An association may be defined in the words of Cole as "any group of persons pursuing a common purpose or system or aggregation <sup>Association</sup> of purposes by a course of co-operative action extending beyond a single act, and for this purpose, agreeing together upon certain methods of procedure and laying down, in however rudimentary a form, rules for common action"

A University, a Trade Union, a Church is as much an association as the State. But there are points of fundamental difference between the state and these other forms of association. A man is born in a state, <sup>Distinction between State and other forms of Association</sup> he cannot choose the state to which he is to belong just after his birth. But he can make a choice of the Universities, Trade Unions or Churches to which he would like to be a member. He can become a member of many associations e.g. of two or three Universities or Trade Unions, but he must be a member of a single state. The area of a state is confined to a particular loca-

lity, but an association like the Roman Catholic Church or the Third Internationale covers the whole world. Other associations are not as permanent in character as the state. The utmost punishment which other associations can inflict is expulsion, but the state can even forfeit the life of a member. Voluntary associations thus lack the legal power of coercion—the power to command and enforce obedience—in short the power of Sovereignty. This is the most fundamental distinction. The purpose of a voluntary association is limited to the pursuit of one or at most a few particular interests, whereas the state is concerned with a great and ever-increasing variety of interests. In short, it is charged with the care of general rather than particular interests.

An association like a University is created by the state. A Trade Union grows up without the agency of Government indeed, but it can be dissolved by the state. A Church may be prior in origin to the state, but it must be tacitly or explicitly recognised by the state. A Church whose activity is detrimental to the interest of the state may be forcibly expelled from a state. Thus the state is an all-pervasive, compulsory, permanent and theoretically an omnipotent association, while other associations are limited in their scope, procedure and function. It is the state which upholds and enforces order amongst other associations within its boundary.

According to legal theory the State is the sovereign association, normally supreme within a definite territory and over a complex of activities. But the juristic conception of the State is vague and abstract. It does not take into account the different kinds of social and individual forces which struggle to control the government vested with supreme legitimate power. Political scientists of the present day regard the state simply as an order in which there is super-ordination and subordination of individuals and groups to each other, and think of this order as obtained and maintained by social power, operating in the name and with the title of supreme authority.

An Institution has been defined as “a recognised custom or form of social tradition or idea, manifested in and through human beings either in their personal conduct and relationship or through organised groups or associations.” Marriage, Monogamy, Monarchy, Peerage, Caste etc. are examples of Institution. They are, therefore, long established forms of social traditions. Their importance or usefulness lies in the fact that they maintain social stability by ensuring the continuance of social ideas or ideals. Except in the event of extreme idealism

The State is compulsory, permanent and omnipotent association

The State in legal theory and in practice

Institutions

getting the upper hand, on account of the social institutions, social life flows easily. In course of ages and generations, again, new institutions come into existence with the changing social order. In short, institutions though changeable have a long lease of life to run.

## V. State, People, Nation and Nationality

The concept of state is purely legal and political. A state has a legal authority to enforce the people and a political organization through which that authority is expressed. A people, on the other hand, is mainly a racial or ethnical concept. Common traditions, common origin and a consciousness of a common interests are the basic considerations which go to make a people. A number of families happening to live together somewhere and developing some measure of friendship do not form a people. It is when they become welded together in a unity of culture and traditions that they constitute a people.

Distinction  
between  
State and  
People

According to Burgess, a people is defined as "a population having a common language and literature, a common tradition and history, common customs and a common consciousness of rights and wrongs, inhabiting a territory of a geographic unity." In the opinion of Gumpłowicz also the test of a people is "community of civilization." Similarly Bluntschli defines a people as "a union of masses of men of different occupations and social strata in a hereditary society of common spirit, feeling and race, bound together, especially by language and customs, in a common civilization which gives them a sense of unity and distinction from all foreigners, quite apart from the bond of the state."

Distinction  
between  
People and  
Nation

A nation, on the other hand, is defined as an association of people of ethnic unity inhabiting a territory of a geographical unity. The German word "Volk" is usually translated into English as "people," but it has got the same political significance as the English word Nation. This similarity in meaning between the German word "Volk" and the English concept "Nation" is due to the respective interpretations of the two terms. Bluntschli observes that the chief point which distinguishes a nation from a people is that in it the community of rights is developed in a more marked degree and is raised to the point of participation in the conduct of the state. So a nation is usually accompanied with statehood, whereas a people is not.

Nation

But every nation is not invariably a state, for there are states which comprise many nations and nationalities. In a state again, there may be many peoples. Sometimes, again, a people may be

identical with a nation, but in most cases a nation consists of many people

The distinction between "nationality" and "nation", has been drawn by Lord Bryce as follows "a nationality is a population held together by certain ties, as for example, language and literature, ideas and customs and traditions, in such a wise as to feel itself a coherent unity distinct from other populations similarly held together by like ties of their own, a nation is a nationality which has organized itself into a political body either independent or desiring to be independent" The distinction between nation and nationality, therefore, rests on the attainment of political organization. When a nationality attains political organization, i.e. becomes endowed with statehood, it emerges into a nation. A nationality is thus a nation in making—a developing nation

Nationality is a concept of purely subjective character. It is a spiritual sentiment arising among a group of persons who speak a common language, who cherish common historical traditions, and who think that they constitute a distinct cultural society. The sentiment of nationality is responsible for the desire in the group to control their own social life in religion, law and politics. "It implies", observes Prof. Laski, "the sense of a special unity which marks off those who share in it from the rest of mankind. That unity is the outcome of a common history, of victories won and traditions created by a corporate effort. They recognise their likeness, and emphasize their difference from other men."

## VI. Marks of Nationality

There is a very close relation between State and Nationality. A sense of national unity is not in itself a sufficient basis for a nation-state indeed, but a state must possess or, bring into being some basis of nationality. Every nationality aspires to be a state. But what factors constitute a nationality? Hardly any two nationalities would give the same answer to this question. The Nazis would emphasise the so-called biological stand-point and define it as "a people belonging to a single biological stock". An Englishman would call a people bound together by ties of history, language and culture a nationality. In America, "a free assemblage of individuals irrespective of race and language who are willing to live under a single government," is regarded as the essence of nationality.

The following "unities" are usually considered to be the marks of Nationality—(1) the occupation of a defined geographical

area with a character of its own, (ii) unity of race, (iii) unity of language, (iv) unity of religion, (v) common subjection, (vi) community of economic interests, and (vii) possession of common tradition. Each of these factors is, by itself, a mere bond of association, but no single one of them is indispensable for Nationality. "No single factor," <sup>The so-called 'unities'</sup> writes Prof Ramsay Muir, "neither geographical unity, nor race, nor language, nor religion, nor a common body of custom, nor community of economic interest, seem to be indispensable to nationhood; and even the possession of common traditions though the most powerful of binding forces, need not prevent the inclusion within a nation of elements which do not fully share these traditions. Some at least of these ties of affinity, the people that claims nationhood, must possess, but no one of them is essential or can be used as a certain criteria."

The occupation of a well-defined geographical area with a character of its own gives rise to the sentiment of Nationality, as is seen from the case of the Scots and the Irish of the present day, and the Slovaks, Slovenes and <sup>Geographical area</sup> Ruthenians in Austria-Hungary before the war. But the feeling of Nationality may be observed even in the case of those who do not live in a well-defined geographical area. The Jews and many of the Poles are spread over the whole world and yet they keep then nationality even in alien environment.

Unity of race is said to be a characteristic of Nationality. But from the scientific point of view there is hardly any nationality which can be regarded as the descendants of a single family or stock. Hitler has made Racism <sup>Unity of race</sup> the revolutionary philosophy of a discontented German middle class which projected upon the Jews all the resentment and lust for power which it felt. Unity of race, however, does not make a single Nationality. Though the German, English, Dutch, Danish and Scandinavians are more or less homogeneous from the racial point of view, yet they do not form one Nationality. There is absolutely no racial unity in the population of the U S A, yet a strong sentiment of nationality prevails there.

Many of the national movements in modern Europe turned largely on national language, e.g., the Irish, Polish and Bohemian movements. But the existence of Nationality is quite possible without unity of language. Switzerland has got <sup>Unity of language</sup> a nationality of its own, but three distinct languages are spoken in the country. The English language is spoken in the U S A, but there is an American nationality, different from that of Britain.

Religious unity sometimes promoted the feeling of Nationality. The Greek Christians hated the Turkish Moslems when the

former were subjected to the latter. Similarly the Irish Catholics objected to the rule of the Protestant English and the Catholics of Poland to that of the Protestant German or the Orthodox Russian. But with the growth of religious toleration, the influence of religion as a bond of national unity has weakened considerably.

**Unity of religion** Common subjection often promotes the sentiment of Nationality. The patriotic leaders try to rouse this sentiment by describing the nationality's plight as "slavery". Misgovernment is said to be the prolific parent of nationality.

**Common economic interests** Community of economic interests is an important factor in nationality, because the people of an unfree nationality believe that they would be better off if they were independent and could establish its own tariff, and promote its own industries and agriculture. But common economic interests do not always count as is seen from the case of North America, where though the economic interests of Canada and the U S A are very much the same, yet there are separate nationalities.

**Common historical tradition** Common historical tradition has provided arguments for the establishment of separate states by the subject nationalities. Thus the Greeks treasured the memory of the glory of ancient Athens, the Poles recalled their former greatness in the sixteenth and seventeenth centuries and the Irish remembered that Ireland had been free in the Middle Ages. The absence of common historical tradition creates many difficulties in a state which is in other respects homogeneous. In Yugoslavia the two most important nationalities are the Serbs and the Croats. They belong to the same race and speak the same language, but their history and traditions are different. Serbia for centuries formed part of the Turkish Empire, while the Croats had been a part of the Austrian Empire, and as such were richer and better educated than the Serbs. The difference in historical tradition bred jealousy and hostility between the two nationalities and was responsible for the fall of twenty-three governments in the ten years from 1918 to 1928.

The problem of nationality can be fruitfully interpreted only from the psychological point of view. MacDougall in his "Group Mind" observes that it is futile to attempt "to discover the true secret of nationality in such considerations as geographical boundaries, race, language, history, and above all, economic factors. Each and all of these considerations, real and important though they are and have been in shaping the history and determining the existence of nations, only play their parts indirectly

by affecting men's minds, their beliefs, opinions and sentiments, especially by favouring or repressing the development in each people of the idea of the nation "A nation, unlike a class", observes Bertrand Russel, "has a definition which is not economic. It is, we may say, a geographical group possessed of a sentiment of solidarity. Psychologically, it is analogous to a school of porpoises, a flock of crows, or a herd of cattle. The sentiment of solidarity may be due to a common language, a supposed common descent, a common culture, or common interests and common dangers. As a rule all these play a part in producing national sentiment, but the sentiment however produced, is the only essential to the existence of a nation. The devotees of nationalism tend to think of a nation as a race in the biological sense, to a much greater degree than the facts warrant."

## VII. Nationalism

The creed of nationalism is the logical corollary to the creed of liberalism. Liberalism implies the doctrine of government with the consent of the governed. This means not only the right of the general body of citizens in a particular political community to select their own form of government and elect their own representatives to the legislature, but also their right to become independent of any other nation. The spirit of nationalism demands for each nationality an autonomous and independent government. This is why the empires of Turkey, Austria-Hungary and Russia broke up into a number of independent nation-states.

Nationalism is based on two psychological factors—gregariousness and exclusiveness. The people who feel that they have their own peculiar social heritage, their own art and literature, form a corporate entity. Recognising their likeness to one another, and their difference from other men they gather together and try to have a sovereign state of their own. In this respect nationalism is an instinctive expression of kinship. But the group must also be conscious of its separateness from others and, therefore, it will manifest an exclusiveness of temper.

The justification for the existence of mutually exclusive national groups is sought in the importance of diversification in civilization. No one nation exhibits within itself the whole range of human culture. Every nation is supposed to possess some such unique national attributes that their development is likely to enrich the civilization of the world. The most beneficial cultivation of the



characteristic qualities of a nation is possible only when that nation is allowed opportunity to develop freely its peculiar customs and institutions. This is the reason why there should be a number of continually competing political groups called nation-states. As within a given community citizens must respect the rights of their fellow-citizens, so that they themselves may enjoy their own rights, similarly each nation, having the right and obligation to defend its independent existence, is expected to acknowledge the same right in other nations and to recognize that its own aims must be limited by the rights and interests of others. This is the liberal doctrine of nationalism. But in the absence of a superior power to enforce mutual forbearance, nations do not behave as properly as citizens do within a state. In theory, nationalism is beneficial for humanity, but in practice, it has degenerated into the rule by brute force. Nations are not guided in their behaviour towards one another by the principles of justice and equity, but are actuated solely by self-interest. When the interests of any two nations clash, war becomes inevitable.

### VIII. Indian Nationalism

Study of western history, politics and literature, impact of nationalist movements in Italy, Germany and the Near East, the awakening of Japan, the researches of Orientalists into the glorious past of India and the religious reformation in the nineteenth century have roused the spirit of nationalism in India. The question is often asked whether India is or can be a Nation. In the English sense of the term, India is not a Nation because she has not yet become independent. In the words of Sir Surendra Nath Banerjee, India is a 'Nation in making'. The psychological factor which makes the people of India feel that they have a common ideal, common economic interest, and common grievance has made India a Nationality.

But some eminent politicians of England and a few communalists in India still persist in denying the existence of the feeling of national unity in India. According to Lord Birkenhead, "just as Europe has never become a single nation, and is divided into many separate and often antagonistic peoples, so India comprises, in a far greater degree, a heterogeneous population riddled by differences of race, religion, caste, interests and sect. No matter how glibly a few seditious on political platforms may declare the unanimity of Hindu and Mahomedan aspirations, the vast bulk of the people of India knows nothing of such unity. These populations live in a state of perpetual hostility, the manifestations of which are, and can only be, suppressed by the firm action of the British authorities." Mr Winston

Churchill declared in a speech on the 18th March, 1931, that the gulf between the Hindus and the Muslims is impassable. "If you took the antagonism of France and Germany", he observed, "and the antagonism of Catholics and Protestants, and compounded them and multiplied them tenfold, you would not equal the division which separates these two races, intermingled by scores of millions in the cities and plains of India." It is true, indeed, that the Hindus and the Muslims have got different systems of law and culture, and that the absence of inter-marriage constitutes a barrier between the two communities. But the differences between them are often exaggerated by interested parties. The Hindus and the Mussalmans usually live peacefully side by side in cordial relation with one another. The political unification of India under one rule, the spread of English education and the easy facilities of communication between one part of the country and another have created a unity of political outlook among all classes of Indian people. They are all united in their demand for Swaraj, though there is some difference among them regarding the connotation of the term. Mr. M. A. Jinnah has, in a recent statement to the press denied the very existence of this sentiment of unity and has demanded a separate nationhood for the Indian Mussalmans. But thousands of nationalist Mussalmans have repudiated the Pakistan scheme of Mr. Jinnah.

Even the Simon Commission, which was not very friendly to Indian aspirations, was constrained to recognise the force of Indian nationalist sentiment. "It would be a profound error", remarks the Commission, "to allow geographical dimensions or statistics of population or complexities of religion and caste and language to belittle the significance of what is called the 'Indian Nationalist Movement'." True it is that it directly affects the hopes of a very small fraction of the teeming peoples of India. True it may be that its leaders do not reflect the active sentiments of masses of men and women in India, who know next to nothing of politicians and are absorbed in pursuing the traditional course of their daily lives. But none the less, however limited in numbers as compared with the whole, the public men of India claim to be spokesmen for the whole, and in India the Nationalist movement has the essential characteristic of all such manifestations—it concentrates all the forces which are roused by the appeal to national dignity and national self-consciousness."

Political scientists now agree in holding that the essence of nationalism does not lie in the identity of descent, community of language and religion, and unity of tradition. "A common memory", observes Dehile Burns, "and a common ideal—these more than common blood—make a nation." The Hindus and

the Mussalmans have lived together for seven hundred years, their economic interest is essentially the same, and their political objective is to attain independence. India, therefore, is a nationality which in course of time is sure to attain Nationhood.

### IX. Influence of Nationality on practical Politics

Territorial settlement of wandering people, according to Pollard, was the germ of nationality. Territorialism is the basis of Nationalism. Nationalism has been developed through the process of substitution of personal relationship by the territorial, implied in the feudal system, through the conception of territorial sovereignty, through the transformation of personal groups such as the 'hundred' and the 'tithing' in England into geographical divisions, and through the development of the law of the land in the place of the law of persons.

The decline of Latin, the language of educated people in central and western Europe, and the rise of vernacular literatures in the fifteenth and sixteenth centuries tended to emphasise nationality. Rivalry between merchants speaking different languages was a potent means of developing national consciousness. The rise of autocracy in England, Spain and France was another powerful factor in producing the modern national state. The Protestant revolution of the sixteenth century was an effect of the rise of national consciousness. But in its turn the religious Reformation strengthened the national consciousness. In the sixteenth century closely integrated states on national lines arose in England, France and Spain. In Germany and Italy, however, the process of integration was retarded by the influence of the Holy Roman Empire.

Napoleon's arbitrary system of boundary making, especially in Italy and Germany, and his occupation of Spain by chicanery, outraged the nascent spirit of Nationalism at the beginning of the nineteenth century. The use of national sentiment was the most powerful cause of the downfall of Napoleon. But the Congress of Vienna, which met in 1814-15 checked the spirit of Nationality. The very existence of the Austrian empire, which contained the Magyars of Hungary, the southern Slavs of Illyria, the northern Slavs or the Czechs of Bohemia, the Poles of Galicia, and the Italians of Lombardy and Venetia, was an emphatic denial of the principle of Nationality. Similar was the case with the Ottoman empire, which contained within it nearly half-a-dozen Christian nationalities, and with the Russian empire, which acquired Finland and a portion of Poland in the Congress of Vienna. Belgium was joined to Holland by the same Congress.

Italy was divided into ten separate states and Germany into 38 sovereign states

But the spirit of nationalism could not be permanently checked by the diplomats. In 1830 Belgium declared her independence of Holland. In 1832 a national state was established in Greece. In 1870 Italy and Germany became unified and national states were established in these countries. In 1878 as a result of the Congress of Berlin, Serbia, Montenegro and Rumania became free from Turkish control. In 1908 Bulgaria too became independent.

Assertion of  
the right of  
Self-deter-  
mination

Nationalism found fuller recognition in the Treaties of Paris (1919-20). The subject-nationalities which had groaned so long under the oppression of the Hapsburgs of Austria, the Romanoffs of Russia, the Hohenzollerns of Prussia and the Ottoman Turks, now claimed the right of self-determination. Out of the dominions of the Tsar arose the four national states of Finland, Esthonia, Latvia and Lithuania. Poland, whose very existence had been blotted out of the map of Europe 125 years ago, again became a state—the fragments of Russian, German and Austrian Poland were reassembled and formed into a national state. Out of the Hapsburg dominions three other states were formed—Czecho-Slovakia, Jugo-Slavia and Hungary. The Irish people, after a period of servitude for nearly 800 years, gained the Dominion Status.

Post-war  
settlement  
of Europe

But the territorial settlements of the continent have not been and could not be made strictly according to the principle of nationality. Thus there are nearly three lacs of Austrians and a similar number of Slavones and Croats and Dalmatians in the new territorial acquisitions of Italy. Czechoslovakia contained many Germans, Hungarians and Ruthenians. Poland contained more than three million Ruthenians and many white Russians. Rumania contains a considerable number of Hungarians, Germans and Serbs. Thus the problem as to how far the right of self-determination should be conceded arises.

Unsatisfied  
nationalities

## X. The Right of Self-determination

The term "self-determination" was coined on the eve of the conclusion of Peace treaties of 1919-20, but it describes something that is much older. It means the right of each nationality to decide for itself how it shall be governed and by whom. Mill gave the clearest expression of this view in the middle of the nineteenth century in his 'Representative Government'. He advocated the doctrine of 'one nationality, one state' and observed—"where the sentiment of nationality exists in any force, there

is a *prima facie* case for uniting all the members of the nationality under the same government, and a government to themselves apart "

We have traced above the influence of the principle of Nationality on European history. We have seen that the principle was responsible for the disintegration of old states (called Poly-national states) like Austria-Hungary, Turkey and Russia, which contained many nationalities. But on the other hand the principle was able to integrate petty states, all belonging to the same nationality, into one big state—like Germany or Italy. Thus the principle of nationality, in the words of Lord Curzon, "is and has been in the past a unifying force but it may be, and has recently become, also a disintegrating force "

The modern tendency of this principle is to disintegrate the existing states. If this principle is strictly followed, Great Britain will be divided into England, Wales and Scotland, Switzerland will be divided into three states and Belgium into Walloon and Flemish states. The 26 states of Europe will be divided into 68 states. Not to speak of further sub-divisions, the divisions that have already been created have been severely criticised. Thus one writer says—"Application of the principle of self-determination as carried out by these Treaties was a most dangerous experiment. Its result has proved to be one of the greatest curses that has fallen upon Europe. That does not mean that self-determination was wrong. But it is now perfectly clear that it was an error to permit self-determination to create a number of new states, each believing itself sovereign, without at the same time controlling the relations of these states to each other. That was a calamity as great as war itself. It was within the power of the treaty-makers of Paris to have so federated these states that the economic impossibilities arising from this unrestrained self-determination would not have been so certain "

The modern trend of history is towards Internationalism. Creation of a large number of small states would certainly stand in the way of international harmony and co-operation. A solution between nationalist aspiration and international co-operation may be found in federating small states, as has been suggested above. The vision of the Western writers of Political Science is coloured either by nationalist sympathy or by imperialistic spirit. Hence they have written much on rights of nationalities, which appears to a dispassionate Indian, to be the manifestation either of extreme Particularism or of Jingoism.

## XI. Principle of one Nationality, one State

It has been held that "it is desirable that the boundaries of state should coincide with those of nations." It is sometimes desirable indeed to allow an extremely disaffected nationality within a state to secede and to form a separate state. Theoretically speaking, there can be no right of any nationality to secede, because the state in the interest of self-preservation, has the right to coerce every individual and every association within it to submission. But theoretical right is not the only consideration in practical politics. The ethical justification of state lies in promoting the interests of all. If in the interest of the disaffected nationality and that of the safety of the state it is found expedient to allow secession, it should be done. But in every case secession cannot be allowed. If it is found that an aspiring nationality has will to independence but not the capacity to maintain it, or that there is extreme division in the rank of nationalists as regards the form of government, then it is better to refuse the demand. Here, too, a difficulty arises. "Politically weak and incapable peoples", says Garner, "must submit to the guidance and tutelage of the stronger and more highly endowed nations." But the physically stronger nations invariably consider themselves to be highly endowed and they have a tendency to regard the subject nationalities as "politically weak and incapable." The attitude of the U S A towards the Philippines and that of Britain towards India may be cited as illustrations. Use of force by the subject nationality and active sympathy of the Great Powers have been the means of asserting the right of self-determination. The Great Powers, however, should always take into consideration whether the creation of new national states would not increase international complications.

Mill advocated the cause of a mono-national state, that is, upheld the theory of 'one nation, one state'. Mill's Doctrine of Nation-State  
 "It is in general a necessary condition of free institutions", says Mill, "that the boundaries of governments should coincide in the main with those of nationalities." This is, however, geographically impossible and Mill himself has admitted that this view represented an ideal. Mill has further said, "Where the sentiment of nationality exists in any force, there is a *prima facie* case for uniting all the members of the nationality under the same government and a government to themselves apart. This is merely saying that the question of government ought to be decided by the governed." In other words Mill has pleaded in favour of the right of self-determination, the right of the people to decide for themselves with whom they shall be politically associated. But this right of self-determination, as we have seen, is one which is subject to limitations which cannot be passed without breaking

into fragments many long-established states. Mill has expressed a third opinion which has also been contested.

He has asserted that "free institutions are next to impossible in a country made up of different nationalities." If the different nationalities bitterly hate one another, it is impossible indeed to run popular democratic government. The history of Switzerland, however, affords a striking refutation of the truth of this proposition. It would manifestly be contrary to the truth to say that "free institutions" do not exist in Switzerland. In the United States of America too which is composed of mixture of many races, the system of representative government has worked with greater success perhaps than in many states having an ethnically homogeneous population.

Gumpłowicz asserts that, "there is no historical or sociological justification of the view that mono-national states possess elements of advantage over those composed of a number of nationalities." He cites the example of Switzerland as the 'freest state in Europe'. "The combination of different nations in one state", says Lord Acton, "is as necessary a condition of civilized life as the combination of men in society. Inferior races are raised by living in political union with races intellectually superior. It is in the caldron of the state that the fusion takes place by which the vigour, the knowledge, and the capacity of one portion of mankind may be communicated to another." The statement of Lord Acton in regard to the value of the poly-national state cannot be accepted without some qualifications. The advantages claimed by Acton are applicable to states where the various nationalistic groups have consented voluntarily to live with one another under the same state organisation like Switzerland, the United States and the like. On the other hand, in the cases of discontented nationality, the division of state is desirable. The case of Switzerland has been cited above to strengthen the arguments in favour of poly-national type of state. But Switzerland has a federal form of government, in which the rights of each canton are secure. The example of Switzerland should rather point out that a poly-national state should have a federal form of government. We may repeat again, that in federalism alone lies the true solution of the controversy between mono-national and poly-national states. The right of each nationality to its own language and culture should be guaranteed in the federal constitution.

## XII. Crisis in the theory of Nation-State

The trend of history up till the outbreak of the second European War (Sept 1939) has been towards the creation of

nation-states The Treaty of Versailles was, with some exceptions, based on the theory of self-determination of peoples. It accepted the principle that the nation-state was the final form of civilized society. In accordance with this theory seven new states were created, namely, Finland, Esthonia, Latvia, Lithuania, Poland, Danzig and Czechoslovakia. Schleswig-Holstein was given to Denmark because it was historically hers and its people were Danish. Alsace-Lorraine was traditionally French and its rendition only righted the wrong perpetrated after the Franco-Prussian War. In the case of Germany, however, the principle of nationality was not adhered to. Belgium got Eupen and Malmédy, inhabited by German people and Italy received Trentino and Trieste. Trentino contains a quarter-million German inhabitants. A belt of territory populated heavily by Germans and cutting across Prussia from the Polish borders to the North Sea, popularly known as the Polish Corridor—was given to Poland, thereby isolating thousands of square miles of east Prussian soil from the remainder of Germany. Austria and Germany are both inhabited by German people, but Article 80 of the Versailles Treaty bound Germany to "respect strictly the independence of Austria."

Theory of  
Nation state  
as the  
basis of the  
Treaty of  
Versailles

Inspired by the liberal-national ideals, the Allied Powers created a number of independent nation-states. They believed in the equality of nations. But the equality of nations was a fiction and it was annulled by the fact that the Great Powers, in a world of legalized lawlessness, could impose their will upon their weaker neighbours. Though in theory a large number of states was created, in practice it meant only a few great powers each with its zones of influence and satellite states.

Fiction of  
equality of  
nations

Germany challenged the theory of nation-states. Arthur Reiss wrote in "Borsen-Zeitung" on January 18, 1940. "It is not true that the people of Europe are equal. It is also nonsense to maintain that all people have equal rights. Not every people is capable of a state, not every people has a right to its own state. And not every people has a national and imperial vocation." Dr. Ley wrote in "Angriff" on January 31, 1940. "A lower race needs less room, less clothing, less food and less culture than a higher race. The German can not live under the same conditions as the Pole or the Jew." The Nazi slogan of "Lebensraum" means the space required by a nation for living. But it is not the mere space sufficient for subsistence under a system of free exchange of goods. It means a domain sufficiently comprehensive to provide Germany with "absolute freedom of action." Germany must have the oil of the Caucasus, the minerals of the Ukraine, and the grain of Hungary and Rumania, also she must have the steel of northern France, control of the shore line

German  
theory of  
Living  
Space



of Belgium, Holland and northern France, and the colonial domains of France and Holland. It is in pursuance of this ideal that Germany took over Austria on March 12, 1938, acquired the Sudeten area of Czecho-Slovakia by the Munich Agreement on September 30, 1938, annexed the rest of Czecho-Slovakia on March 14, 1939, acquired Memel from Lithuania on March 22, 1939, conquered Poland on September 27, 1939, Norway on May 3, 1940, Holland on May 19, 1940, Belgium on May 28, 1940, and France on June 17, 1940. Denmark, Rumania, Hungary and Luxemburg have become mere satellites of Germany. Russia has annexed a portion of Finland after a bloody war. On June 15, 1940, while French resistance was collapsing Russian troops marched into Lithuania, and the next day into Estonia and Latvia. Thus the Treaty of Versailles has been undone and which it has vanished a large number of nation-states.

The causes of the disappearance of small nation-states are deeply rooted in the theory and practice of the big Powers of Europe. Writers like Seeley, Benjamin Kidd and Paul Rohrbach argue that a highly civilized nation has the right and obligation not only to protect its independence and administer its internal affairs without interference from others but also to expand away, by force if necessary, over more backward peoples. They hold that human civilization progresses toward higher stages as nations strong in material wealth and military organization extend their sway over nations less advanced in these respects.

The progress in the technique of production has made it possible to realise the economies of large scale production. But no nation can now consume all the manufactured goods it produces. The large scale manufacturers use the power of the nation-state to obtain an exclusive market for their commodities. As the area of undeveloped countries is limited and as world-market implies foreign competition quarrels between expansive nations give rise to warfare. The stronger nation having defeated the weaker ones becomes transformed into an imperial power. Moreover, the destructiveness of modern warfare is so great that the nation-state tries to acquire such boundaries as to have access to wheat, coal, iron and petroleum, to safeguard itself from the dangers involved in war. It will go on increasing its armaments and its neighbours will also do the same. Thus an atmosphere of nervous hostility is provoked among big nations. The smaller nations seek subordinate alliance with their bigger neighbours with a view to win security by their multiplied strength. As early as 1925 Prof. Laski wrote, "Either national States must learn to

Treaty of  
Versailles  
reversed

Theory of  
expansive  
nationalism

Economic  
causes

Nation-  
states  
provoke war

co-operate instead of to compete, or, it is likely, the small national State will cease to possess effective independence. Even the brief but feverish interval since the Peace of Versailles has shown that the new States of Europe are driven to become the satellites of the greater Powers in their hurried search for avenues of survival. They are driven to barter what truly constitutes their freedom for military protection. If this process proceeds unchecked, we shall see the world peopled, perhaps, by some half-a-dozen great empires each of which, in seeking its safety, will destroy the whole fabric of civilization." In the light of events of 1939-40 the words of Prof. Laski appear to have a prophetic significance. It seems, to-day, that the ideal of nation-state is a chimerical one, unless some kind of organization is instituted to bring about effective co-operation in international affairs.

### XIII. Organic or Organismic Theory of the State

We have shown before that unity is the essential characteristic of the state. But different theories have been started regarding the nature and degree of this unity. One school of writers, known as the monistic school, holds that the individuals composing the state are so completely merged in it that they have no separate existence at all. There is another opinion, known as the monadistic theory, which says that the individual is a self-contained unit and that the only bond of unity between state and individual is that of geography. Still another school, the dualistic, considers the relation of the individual to society to be one of partial dependence. Finally, there is the organic theory of the state, which has found advocates from the earliest times.

Different theories regarding nature of the state

The theory which regards society as analogous in structure to a biological organism, and thinks that the relation of the individual to the whole mass is similar to that which exists between the cell and organism of a living being is known as the Organic theory. The tendency of Greek political thought was to insist on the subordination of the individual to the state. In this sense, the political theory of Aristotle may be called organic. In the middle ages, too, various writers advocated this theory to show that there can not be two heads in a body politic and as such either the Emperor or the Pope must be the head. But the elaboration of the theory and its express application to the problem of Government interference could be made only after the establishment of the evolutionary theory of the biological world in the nineteenth century. Amongst the notable advocates of this theory we may mention Herbert

History and statement of the Organismic theory

Spencer (English), Bluntschli (German), Auguste Comte (French) and Gumplowicz (Polish)

These writers hold that there is a striking resemblance in origin, structure and function between social body and animal organism

Points of  
similarity  
between the  
State and  
human  
organism

—(1) Origin—Both the animal and social bodies begin as germs and develop complex structures naturally in course of time (2) Structure—In both there exist the sustaining system, the distributory system and the regulating system “Just as the foreign substances which sustain the animal determine the alimentary canal, so the different minerals, animals and vegetables determine the form industrialism will take in a given community” As there is the circulatory system in the Organic body, so there is transportation in body politic The nervous and neuro-motor system in the animal finds its parallel in the governmental military system in the body politic Bluntschli goes so far as to attribute sexual qualities to the state which is masculine, while the Church is feminine (3) Function—The most important and fruitful parallel between the two is to be found in function As hands and feet are parts of the body, so the individual is the part of society “As it is impossible to consider that the hand has separate existence from that of the body, so is it impossible to divorce the individual from society” The individual exists in State, and the State exists in the individual

The Organic theory about the nature of the State serves a valuable purpose by emphasising the essential unity of the State.

The individual is not an isolated entity but a social unit, and the state also depends on the individuals composing it The Organic theory thus clearly brings before us the inter-dependence of the State and the individual

Criticism of  
the theory

But Herbert Spencer has built up his individualistic political philosophy on the basis of the dissimilarity which he finds between society and the animal organism. He observes that consciousness in the animal is concentrated in a small part of the aggregate, while in social organism it is diffused throughout the aggregate Hence he concludes that society exists for the benefit of its members, and not its members for the benefit of the society This conclusion denies the intrinsic relation of the individual to society, and thus deprives the Organic theory of whatever merits it possesses

Spencer's  
individual-  
ism

(a) It points out only an analogy, and analogy does not mean identity In the animal organism hands, feet or eyes can not have separate will, but the will of the State is influenced and largely determined by volitions of the individuals composing the state (b) The activity of the members

Defects of  
the theory

of an animal organism is wholly confined to the organism itself, but the existence and activities of the members of the state are not exhausted in the life and activity of the state. The state can control action only but not motives (c) <sup>In the state there is deliberate growth</sup> The constituents of the body politic move freely from place to place and their number may be arbitrarily added to or lessened, but the members of an animal organism are permanently fixed (d) Animal organisms derive their life from pre-existing living beings, but the State does not and can not obtain vitality from other political powers (e) There is a danger too in following the organic analogy in the case of the State. In animal organism the laws of development are blindly and intuitively followed. If we do not make efforts to better the organisation of the state and depend on natural growth there will be no improvement. The growth of the State is, to a considerable extent at least, consciously felt, and the form of its organisation self-directed. (f) <sup>Dangerous conclusions from the theory</sup> The Organic theory may prove to be positively mischievous either by emphasising on the entire subordination of the individual to the State, or by giving too much stress on the independence of the individual of the State. Hence it is better to reject the analogy of the State to animal organism.

## CHAPTER II

### THEORIES OF ORIGIN OF STATE

#### I. Speculations about the Origin of the State

The origin of the state is obscure, though the modern sciences of Biology, Ethnology and Anthropology have thrown much light on it. It is not possible to point out any definite period when the state might be said to have come into existence. Manifestation of political consciousness and evolution of political organisation are the two essential factors of the state. But the circumstances under which primitive men secured for the first time these two essentials of state-life are veiled largely in the mists of obscurity. Hence various theories were started in different ages to explain the origin of the state. Some theorists held that the State originated from the divine will, some maintained that it was created by a contract, some argued that it was brought into existence by force or cunning, and others traced its beginning in the patriarchal or matriarchal family. All these speculations are based on inferences and generalisations. None of these is accepted now as valid. Yet a discussion about these theories serves some very important purposes. First, these theories indicate the conditions and spirit of the age in which they flourished. Political theories are the outcome of actual political conditions and as such their study is indispensable to historical political science. Secondly, these theories had immensely influenced political development. The theory of divine right of kings was largely responsible for the conflict between the Crown and Parliament in England in the seventeenth century. The Social Contract theory of Rousseau strengthened the belief in democratic government. Thirdly, discussions of these theories throw light on the general concepts and problems of political science.

Necessity of studying the different theories

#### II. The Theory of Divine Origin

The earliest theory regarding the origin of the state is that which attributes the establishment of the state to God. According to this theory, God made his will known to certain persons, who were his vicegerents on earth. These vicegerents communicated the will of God to the people and exacted obedience from them. With the enforcement of order and obedience originated the state.

Statement of the theory

Popular belief in the ancient period

In Asiatic monarchies the rulers claimed a divine right to control the people, and the latter submitted to this without question. The Semitic people, of whom claim the Jews form a branch, looked upon God

as the immediate source of royal powers. The Greeks regarded the State as natural and thus may be said to have believed it as a divine institution. Christianity strengthened the belief in the theory of Divine Origin. The following saying of St. Paul found favour with the Church Fathers—"Let every soul be subject unto the highest powers, for there is no power but of God, the powers that be, are ordained of God. Whosoever resisteth the power, resisteth the ordinance of God and they that resist shall receive to themselves damnation."

In the middle ages a great controversy arose between the Papacy and the Holy Roman Empire. Both the Pope and the Emperor claimed to be the vicegerent of God in temporal matters and both defended the divine nature of the State. During the Reformation, Luther, Zwingli and Calvin reiterated the divine origin of civil authority and the necessity of the citizen's obedience thereto.

James I of England was a stout defender of the divine right of Kings. He wrote a book entitled "True Law of Free Monarchy" and in it he claimed,—“It is atheism and blasphemy to dispute what God can do, so it is presumption and high contempt in a subject to dispute what a king can do, or say that a king cannot do this or that.” <sup>James I and Filmer</sup> Filmer in his "Patriarcha," written in 1681 held almost similar views. The French writer Bousset also asserted that the king is an image of the Majesty of God himself. The theory was discredited during the French Revolution, but after the Revolutionary and Napoleonic wars, the sovereigns of Austria, Russia and Prussia solemnly asserted in the famous treaty of the Holy Alliance that they looked upon themselves as being delegated by Providence to govern their peoples. The belief in the divinity of the King still persists among the simple folks of India and especially amongst the Nepalis.

It is true that the primitive peoples believed and still believe in the supernatural power of the king. The king was very often the highest priest amongst primitive peoples. Metaphysically, it may be true that all power ultimately comes from God and that by Him is implanted in the nature of man the need and demand for the state. But the theory of divine origin of state fails to explain why in a particular community a definite set of individuals should arrogate to themselves the right to rule. It becomes also difficult to explain the position of an elected president of a State with the help of the theory of divine origin. Moreover, the laws of God and the rules of morality have then authority upon the intention rather than the outward act. But the state deals

Criticism of the theory

with external actions only. The theory makes the king all-powerful and unaccountable to anybody and hence it is liable to prove dangerous sometimes. Monarchy and not any other form of government is possible under this theory of divine origin.

The theory of divine right of kings declined owing to (i) the separation of Church and State (ii) the rise of Social Contract theory which emphasised consent and (iii) actual refutation of absolutism by the growth of democracy. Now-a-days nobody seriously believes in this theory.

Causes of  
the decline  
of the  
theory

### III. The Contract Theory

The term 'contract' has been used in political theory in a double sense. First, it has been used as description of an agreement between rulers and subjects, according to which the power of ruling is placed in particular hands. The agreement may be called the 'governmental compact' and by it the legitimacy of the existing governments is determined. Secondly, contract means an agreement between individuals of a particular community, according to which such community first becomes politically organised. In this agreement to be politically organised, there is no necessary reference to the manner in which, or the person by whom, the political power is to be exercised. This may be called the Social Contract or Political Contract. By it the origin of the State, that is, of the political power itself, is explained. Logically, the Social Contract must precede the governmental contract, because, unless a community is politically organised there cannot be any agreement regarding its form of government. But in the history of political theory we find that the governmental compact was enunciated before the Social Compact.

Governmental  
contract  
and social  
contract

The essential ideas of all contract theories may be stated as follows. In the period antecedent to the institution of government, man is found in the "state of nature," uncontrolled by any laws of human imposition. Man is guided by such regulations as are supposed to be prescribed to him by nature itself. These regulations are, of course, unwritten, and then spirit is spoken of as the law of nature. Different theorists have expressed different ideas regarding the condition of man in the state of nature. Some hold that it was too idyllic to last, others think that it was too inconvenient to be tolerated, whatever might be the case, man is led to substitute for it a union with his fellowmen. Each individual gives up now his isolation as "natural" individual, and secures in return the protection of all against the possible rapacity of each. Human law, now, takes the place of natural law. The process by which political authority

Essential  
ideas of  
Contract  
theory

is instituted, is, according to this theory, the deliberate and voluntary agreement of the members of the community who, through the instrumentality of a covenant, organise themselves into a body politic

The idea of basing the authority of rulers upon an original compact with their subjects is of very ancient origin. We find a suggestion of it in Plato, the Epicurians developed it. The Roman jurists universally held that the power of the Emperor rested with an original explicit or implicit consent of the populace. Feudalism is also based upon the contract between the tenant and his overlord. The mediaeval and early modern writers generally took this view.

Early history of the theory

Up to the end of the XVIth century, society was held to be the product of instinctive sociability of man. So the theory of social compact did not attract much attention. The first writer to make the idea of an original social compact a necessary antecedent to the governmental compact was Althusias, who wrote at the beginning of the XVIIth century. The theory was developed by Grotius and Pufendorf. But the greatest application which the theory received was from Hobbes, Locke and Rousseau.

History of social compact

#### Application of the theory by Hobbes, Locke and Rousseau

"With Rousseau", observes Leacock, "the doctrine of Social Contract, which in the hands of Hobbes was made a weapon of defence for absolutism, and with Locke a shield for constitutional limited monarchy, becomes the basis of popular sovereignty." This observation clearly brings forth the different uses to which the theory may be put. Hobbes, private tutor of Charles II, published his *Leviathan* in 1651, in order to defend monarchical absolutism. Locke, another Englishman, published his *Two Treatises of Civil Government* in 1690 in order to defend the Revolution settlement of 1689. Rousseau, a citizen of Geneva, published his 'Social Contract' in 1762 in order to promulgate the theory of popular sovereignty. Each of these illustrious writers imagined a state of nature and explained the need and character of the contract in a way, most suitable to arrive at the conclusion he wanted to maintain.

Three different interpretations of the theory

According to Hobbes, the state of nature is one of unceasing strife. The competition between man and man for the means to gratify identical appetites, the fear in each lest another surpass him in power, and the craving for recognition as superior are the causes of strife. It is a state of "continual fear and danger of violent death, and the life of man solitary, poor, nasty, brutish and short." Finding this condition of life unbearable, man is driven by evident necessity to join himself with his fellows under some common authority. Each individual

The interpretation of Hobbes



makes a Covenant with his fellows under the following terms — "I authorise, and give up my right of governing myself to this man or to this assembly of men, on this condition that thou give up thy right to him and authorise all his actions in like manner." The consequences of this Covenant are that (1) no breach of the original pact by the sovereign can be set up as a ground for its violation by the subject, for the sovereign is no party to the compact. (2) Every act of disobedience by a subject is unjust, whatever might be the ground alleged for the act. (3) There is no justification for resistance by the minority on the ground that it did not choose the sovereign, elected by the majority. Sovereignty, therefore, implies an absolute exemption from any just resistance or interference on the part of subjects. Hobbes's theory therefore leads on to absolutism. Under it, revolution is altogether unjustifiable.

Hobbes's theory is attacked on the ground that he failed to make a distinction between the will of the ruler and the will of the State. Hobbes feared that rebellion against a particular ruler would lead to the destruction of the State. "He did not realise that the form of government may be changed without destroying the State, and the existence of sovereign power does not necessarily mean the absolute authority of the particular persons who exercise it."

To Locke the state of nature is not a state in which men live in brutish reciprocal hostility, but one in which peace and reason prevail. It is not a lawless state. Under the law of nature men enjoy their natural rights of life, liberty and property. But in the state of nature, there is no common organ for the interpretation and execution of the law of nature. Though this law is implanted in the hearts of all men, yet differences of intelligence and conflicts of interest will cause disputes. So the necessity for organising civil society arises. According to Locke each individual contracts with each to unite into and constitute a community for the purpose of preserving life, liberty and property. The contract involves an agreement by each of the individuals to give up his natural right of executing the law of nature and punishing offences against that law, but not all his natural rights, as Hobbes has described. Moreover, some of the rights are given up not to any particular person or group of persons, but to the community as a whole. In his theory, the term sovereignty, or the idea of placing unrestricted power in any human hands finds no place at all. The ends for which civil society is constituted being perfectly definite, the means for the attainment of these ends are correspondingly definite and limited. He maintains that the subjects have got the right of making revolution, that is overthrowing the government,

and not the community, under certain contingencies "The community perpetually retains a supreme power of saving themselves from the attempts and designs of anybody, even of their legislators, whenever they shall be so foolish or so wicked as to lay and carry designs against the liberties and properties of the subject."

Locke's merit lies in rendering his theory a basis for revolution and democracy. He limited the powers of the government and recognised the power of the people. Locke however <sup>Criticism</sup> did not appreciate fully the significance of legal sovereignty and failed to see that revolution, however desirable, is never legal.

Rousseau conceives the state of nature to be one of idyllic felicity. Primitive man was unlettered by the shackles of authority and free to live his life without being bound by artificial bonds of human laws. But, as the <sup>The interpretation of Rousseau</sup> members of the race increase, this primitive condition is found to be disadvantageous in many respects. So the men of the community "contracted" themselves out of the natural state into a civil state. The formula on which civil society rests is, according to Rousseau, this—"Each of us puts into a single mass his person and all his power under the supreme direction of the general will, and we receive as a body each member as an indivisible part of the whole." His exposition of the spirit and effect of his contract is an amazing medley of bad logic and utter childishness. Thus he argues—"Since each gives himself up to all, he gives himself up to no one, and as there is acquired over every associate the same right that is given up by himself, there is gained the equivalent of what is lost, with greater power to preserve what is left." If a man gives up his all, how can he preserve "what is left"?

As in Locke's formula, so in Rousseau's, the king is no party to the contract. They agree in limiting the power of government. But with Locke, a legal validity is granted to all <sup>Criticism</sup> acts of the governing power except those plainly in violation of the rights of life, liberty and property. With Rousseau, on the other hand, all laws require the direct participation of the people. "Thus, that sovereign power which Locke considered as held in reserve by the people, and only to be exercised in extreme cases, Rousseau held to be in continual and constant exercise by the people. According to Rousseau, by the original compact the people themselves in their collective capacity became the sovereign and continued so." Rousseau agrees, however, with Hobbes in maintaining the absolutism of sovereignty. "However, his theory practically destroyed the legal nature of governmental authority by making it identical with public opinion, and by

placing the permanence and sanction of government at the mercy of a rather indefinite general will "

#### IV. Criticism of the Contract Theory

The contract theory of the origin of the state was much in vogue in the XVIIIth century. But towards the close of the century a reaction against it was voiced by English philosophers like Hume and Bentham. In the nineteenth century the theory was put under a searching criticism and consequently given up.

The most obvious criticism of the theory is that it has no foundation in history. We do not know of any group of savages without any knowledge of political organisation, suddenly forming themselves by agreement into a body politic. Moreover, the unit in primitive society was not the individual but the family. Hence it would be impossible for isolated individuals to make a contract.

Secondly, the theory is illogical. If there was no body politic before the agreement was concluded, how could the contracting parties create a political organisation? We know indeed, that the Puritan emigrants of the *Mayflower* created a state by contract, but these Puritans had the experience of political organisation before their emigration. They formed a particular state, but not the state for the first time in history.

Thirdly, the presupposition of liberty in the state of nature is fallacious. "Liberty implies rights, and rights arise not from physical force but from the common consciousness of common well-being." But there can be no common consciousness if there had been no common organisation.

Fourthly, it is wrong to say that the supposed state of nature alone is natural, and civil society is artificial. The activities of man which led to the formation of the state are as natural as his life itself. The state, therefore, is natural and not a mechanical contrivance, as the social contract theorists maintain.

Kant tried to give a new orientation to the theory. According to him, the theory is not to be assumed as an historical fact, but is to be regarded as an ideal of social relations. But even in this sense the theory is not tenable. The relation between the state and the individual is not based on voluntary agreement, but on an indissoluble and compulsory bond. Our social duties can not be measured exactly by the extent of benefit we receive from society.

Lastly, as Bluntschli has put it, the social contract theory is "in the highest degree dangerous, since it makes the state and its institutions the product of individual caprice." Such a theory breeds revolutionary spirit.

### Causes of disappearance of the theory

• The chief cause of disappearance of the Social Contract theory was the realisation of its general unsoundness. It was recognised in the nineteenth century that the social contract theory is un-historical, illogical, and even dangerous.

The rise of the historical school of Political Science gave a death blow to the theory, which was a figment of imagination of ungenious upholders of different political creeds. Montesquien discarded the assumption of a state of nature and of social contract and drew conclusions from observations and recorded history. The publication of his "Spirit of the Laws" in 1748 marked a change in political thinking. Burke and Austin followed the historical method in England. In the second half of the last century Biology came to the aid of Political Science. Darwin in his "Origin of Species" applied the theory of evolution. At the present moment every department of knowledge, including Political Science is studied from the evolutionary standpoint. Growth of knowledge and a clear perception of the evolutionary process of Society have contributed to the disappearance of the Social Contract theory.

Evolutionary theory

In spite of so many defects, the contract theory has rendered a valuable service by emphasising the element of consent as the basis of civil society. It was a powerful instrument in driving out the doctrine of Divine Right of Kings and the theory of class privileges from practical politics. The theory clearly brings before us the idea that the relation between rulers and subjects is one of reciprocal rights and obligations, and of protection and obedience. "Out of it there developed the doctrine that kings who derived their authority from the people, were responsible to them, and could be deposed for breaking the pact which they were assumed to have entered into at the time of their coronation."

Its value

### V. Influence of Social Contract Theory

The social contract theory has exerted great influence on actual political development. It was invented for establishing the right of resistance on the part of subjects to sovereigns, who proved extremely despotic. It sought to emphasise the obligations of monarchs to protect the life and property of subjects and to promote their happiness. In the modern world it was first held by the Huguenots in France and the Netherlanders under the Spanish yoke. They sought in this theory their justification of the destruction of despotism. The English people made an important application of this theory in the Convention of 1689, which dethroned James II. A resolution of the Convention asserted that James II "having endeavoured to

Inspires opposition to despots

subvert the constitution of the kingdom by breaking the original contract between king and people has abdicated the government and the throne is thereby vacant."

Rousseau's 'Social Contract' was probably the most epoch-making book ever written, not so much in itself as in its influence upon the constitution-making which followed it. It was the literary fore-runner of the French and American Revolutions. In 1776 the Americans issued the Declaration of Independence which states—"that all men are created equal, that they are endowed by their Creator with certain unalienable rights, that to secure these rights, governments are instituted among men, deriving their just powers from the consent of the governed, that, whenever any form of government becomes destructive of these ends, it is the right of the people to alter or abolish it, and to institute a new government."

The French  
and the  
American  
Revolutions

The French National Assembly of 1789 drew up the "Declaration of the Rights of Man and of Citizen" and it was saturated with the dogmas of the contractual origin of state, of popular sovereignty and of individual rights. The influence of the French Revolution was spread to the Netherlands, Italy and Spain and led to the deposition of legitimate rulers of these countries. Thus we find that the three great political revolutions of the world had been inspired by the Social Contract theory.

Leads to  
recognition  
of rights of  
the people

### Implications of the theory in the modern federal constitutions

The social contract theory exerted some influence on the formation of federal states like the United States of America. Independent units surrendered their sovereignty to the newly created Federal State with a view to promote greater happiness and to secure better defence. All functions essential to the very existence of the federal government and all matters of common interest were assigned to the federal government. The component units retained those functions which were of local interest and importance. But the analogy between the social contract theory and the process of formation of federal states must not be carried too far. No new state can be created by a compact among states. "By a contract", observes Garner, "it is impossible to create an authority superior to the contracting parties, hence a union formed on this basis could be nothing more than a confederation of states."

## VI. The Patriarchal and Matriarchal Theory

"The patriarchal theory of society", observes Maine, "is the theory of its origin in separate families, held together by the

authority and protection of the eldest valid male ascendant " From an examination of the ancient laws of the Romans, Hindus and Slavonians, Maine found out <sup>The Patriarchal theory</sup> that the eldest male parent exercised absolutely supreme power, extending to life and death, over his children as well as his slaves. Through the marriage of children new families are founded, but the authority of the father of the first family is acknowledged by all his descendants. On his death, authority passes to the eldest male ascendant. The tie that bound the members of a primitive community together was a consciousness of kinship and common descent. In some cases adoption had been taken recourse to, but adoption was a legal fiction to give the colouring of kinship.

The conclusion to which Maine arrives is as follows — "The elementary group is the family connected by common subjection to the highest male ascendant. The aggregation of families forms the Gens or House <sup>Idea of representation</sup>. The aggregation of houses makes the tribe. The aggregation of tribes constitutes the commonwealth." He further asserts that the independent group formed by the development of the patriarchal family was normally governed by the "eldest male of the oldest line" representing the "common ancestor of all the free kinsmen." Sidgwick points out that the idea of representation is too artificial to be grasped by early societies. The fittest member of the clan must have been elected to rule.

The French jurist Duguit has lent his support to this theory in recent times. He says—"He (the male parent) is the natural chief, the governor of the little state of which the members of the family are the governed <sup>Character of ancient city</sup>. The ancient city was merely a union of families in which political power belonged to the father."

McLennan, Morgan and Jenks have made researches into primitive society and have come to the conclusion that Maine's theory lacks historical proof to substantiate it. The patriarchal family existed in early Rome indeed, <sup>Defects of the Patriarchal theory</sup> but no evidence of *Patria Potestas* (unlimited power of the father over every member of his household) can be found in the primitive Hebrew family, in Greece or amongst the early Germans.

### Matriarchal Theory

McLennan has found evidence of the existence of matriarchal family founded on kinship through females, and he thinks that it was the matriarchal family which later on developed into the patriarchal state. Jenks holds <sup>Tribe anterior to family</sup> that the process of development of society is just

the reverse of what Maine conceived it to be. According to him "the tribe is the oldest as it is the primary group, in time it breaks up into clans, these in turn break up into households and ultimately these are dissolved, leaving the individual members to constitute the units of society."

Both the matriarchal and the patriarchal theories lack historical proof of their being universally prevalent. Moreover, it is impossible to believe that the state developed through the enlargement and expansion of either the matriarchal or the patriarchal type of family. Prof. Garner wisely remarks,—"The family and the state are totally different in essence, organisation, functions and purpose, and there is little reason to suppose that one should have developed out of the other or that there should have been any connection between them." In the family the location of authority is natural, but in the state it is one of choice. Again, subordination is the principle of the family, equality that of the state. So the patriarchal or matriarchal theory does not help us much in arriving at the true genesis of the state.

Difference  
between  
family and  
state

## VII. The Force Theory

Some writers have used the theory of force both as a historical interpretation of the origin and development of the state and as a rational justification of its being. Historically it traces the beginning of the state to compulsion and aggression, to the capture and enslavement of the weak by the strong. When a victorious war-leader continued to maintain his influence and power even during peace, the state came into existence. The stronger tribe then subjugated the weaker, the tribe expanded into kingdom, and the kingdom ultimately expanded into the empire by the same process.

The theory of force as the origin and basis of the state was held by theologians of the Middle Ages, who were bent upon proving the moral superiority of the Church over the state, based upon mere brute force. Karl Marx, Engels and other writers of the German socialistic group hold essentially the force theory, in a slightly different form. They assert that the growth of the state has been marked by the process of aggressive exploitation, by means of which a part of the community has succeeded in defrauding their fellows of the just reward of their labour. According to Lenin the State is the product of the irreconcilability of antagonism between the different classes in society. It is the instrument of exploitation in the hands of the capitalists who rule over the majority of the population. "It is" as Lenin puts it in a quotation from Engels, "a product of society at a certain

Origin of  
state in war  
and  
conquest

Socialists  
believe in  
Force  
theory

stage of development, it is an admission that this society has become entangled in an insoluble contradiction with itself, that it is cleft into irreconcilable antagonisms, classes with conflicting economic interests, might not consume themselves and society in sterile struggle, a power apparently standing above society became necessary for the purpose of moderating the conflict and keeping it within the bounds of "order", and this power, arising out of society, but placing itself above it, and increasingly alienating itself from it, is the State". The theory of force has also been used as a moral justification of the state. General Von Bernhardi says "Might is the supreme right, and the dispute as to what is right is decided by the arbitrament of war. War gives a biologically just decision, since its decisions rest on the very nature of things."

Bluntschli points out that the theory of force has "a residuum of truth since it makes prominent one element which is indispensable to the state, namely force, and has a certain justification as against the opposed theory (that of contract) which bases the state upon the arbitrary will of individuals and leads logically to political impotence". We <sup>Criticism of the theory</sup> have no hesitation in admitting that force is indispensable to the state, that force has given rise to many kingdoms and empires, but to point out force to be the sole controlling factor in the creation of the state is palpably wrong. The great English philosopher T. H. Green maintains that it is not coercive power as such but coercive power exercised according to law, written or unwritten, for the maintenance of the existing rights of the citizens from external and internal invasion that makes a state.

### VIII. The True Theory of Origin of the State— The Historical or Evolutionary Theory

Having discussed the various theories of the origin of the state, Prof. Garner comes to the conclusion that "the state is neither the handiwork of God, nor the result of superior physical force, nor the creation of resolution or convention, nor a mere expansion of the family." In the criticism

State as a result of spontaneous search after convenience

of the theories referred to above, we have already shown the truth of this observation. Here we shall simply quote a remark of John Morley to indicate the true origin of the state. "The ground and origin of society is not a compact, that never existed in any known case, and never was a condition of obligation either in primitive or developed societies, either between subjects and sovereign, or between the equal members of a sovereign body. The true ground is the acceptance of conditions which came into existence



by the sociability inherent in man, and were developed by man's spontaneous search after convenience "

The origin of the state, then, is to be traced to the instinct and reasoning faculty of man. The state is based on the gregarious instinct, but in its later history, there is the superaddition of reason. As Dr Woodrow Wilson observes,—“Although no system of law or of social order was ever made out of hand” by any one man, government was not at all a mere spontaneous growth. Deliberate choice has always played a part in its development. It was not, on the one hand, given to man ready-made by God, nor was it, on the other hand, a human contrivance. In its origin it was spontaneous, natural, twin-born with man and the family; Aristotle was simply stating a fact when he said, “man is by nature a political animal. But, once having arisen, government was affected, and profoundly affected, by man's choice, only that choice entered, not to originate, but to modify government ”

The fundamental elements of state are organisation and authority—command and obedience. These elements can be first traced in the bond of kinship. There is good deal of controversy as to whether tribe, group or family came first, and as to whether family was patriarchal or matriarchal, but we may safely assert that the state originated in the groups which were formed by the instinct and economic needs of primitive men. The group was bound together by the ties of kinship, real or fictitious. Members of the group were held together by habitual and instinctive respect for authority, that authority again rested upon mutual subordination. The government of the group was carried on generally, though not invariably, by a council of elders.

Magic and religion often transcended the mere tie of kinship and brought various families together. They have played an enormously important part in political movement. Primitive men are easily moved by fear, they are terrified by various natural objects. The most cunning and intelligent among them give out that by magical incantations they can propitiate the evil spirits or injure others. Thus taking advantage of the fear, ignorance and superstition of their fellowmen, the magicians establish their ascendancy.

Sooner or later magic gives way to religion—fear to worship and prayer. Meanwhile the community had grown by conquest, migration and amalgamation, both in population and wealth. An intellectual revolution, replacing magic by religion accompanies this growth. The magician is consequently replaced by the priest. As religion and politics are inextricably mixed up in early society, the priest assumes the

power of king The priest-king appeals to the gods by prayer to preserve and improve the community He himself is often looked upon as a god because of the possession of his nature by a powerful spirit

We may cite certain historical examples of the influence of religion in welding up political communities The worship of Jehovah was the strongest force uniting the tribes of Israel The Greek and Roman city-states grew up round the citadel on which stood the temple of the god or goddess worshipped by a number of families The custom of ancestor-worship was widely prevalent in primitive communities and it proved to be a unifying force But at the same time it should be pointed out that the exclusive worship of a god by a tribe inevitably operated against union amongst different tribes

Religion a  
unifying  
force

Force played a very important part in the origin and development of state Might has often proved to be right The stronger individuals acquired property and kept the weaker ones in subordination to themselves The tribe which was better organised under a mighty leader conquered the neighbouring tribes and annexed their territory The history of every state shows how it has grown in wealth, territory and population by means of conquests In the opinion of German philosophers like Nietzsche and Treitschke, the motive that supplies the impulse to the forming of state is not, as Marxists claim, economic—the craving for material possessions and pleasures nor is it as the Greeks and the Idealists held, the aspiration of man to develop his higher spiritual and rational faculties, nor is it as the liberal democrat considers it to be, the desire to protect the unfortunate and maintain just relations among all members of the community According to them the chief motive has been love of power and passion for self-assertion But it has already been pointed out that force alone can never be the basis of the State There must be the willing consent and co-operation of the people behind it

Force

The fourth factor which contributed to the growth and development of the state was the slow rise of political consciousness Political consciousness implies the recognition of certain ends to be attained through political organisation At first there was no recognition of unity of interest Gradually it appeared in the minds of a few of the natural leaders, then it spread by degrees throughout the mass of the population and finally became general "At first the state came into existence merely as an idea, that is, it appeared in a subjective form, without being a physical fact" In course of time the supreme importance of maintaining

Political  
conscious-  
ness, the  
manifesta-  
tion of  
reason

order and defending the community against aggression, both internal and external dawned upon the minds of the people. They came to realise also the dependence of economic improvement on political organisation. All these factors led to some kind of law. Law is at first nothing but isolated judgments laid down by chiefs and the custom of the people.

The theory which traces the origin of the state, not to a single movement or plan, not to any single point of time, but to the result of a gradual process running throughout the known history of man, is called the historical or evolutionary view of the state. "The proposition that the state is a product of history", says Prof Burgess, "means that it is a gradual and continuous development of human society out of a grossly imperfect beginning through crude but improving forms of manifestation towards a perfect and universal organisation of mankind." As we have shown above, many elements were involved in this process of development. Kinship, religion, force and political consciousness, each played an important part in it. But it is impossible to state in what kind of combinations these four elements operated in a particular community. Prof Gilchrist has truly observed that any detailed construction of the earliest forms of civic organisation is bound to be fanciful.

## IX. Idea and Concept of the State

German writers make a distinction between the concept and the idea of the State. They maintain that the concept of the State at any historical period is found in the common attributes of the states actually existent. The idea of the state is the ideal of perfect form of which any actual state is only an approximate realisation. Burgess further elucidates the distinction by observing that "the idea of the state is the state perfect and complete, the concept of the state is the state developing and approaching perfection with the progress of mankind and the development of the world the two will tend to become identical."

Different ages have got different ideals of the state. The Greeks thought the perfected form of city-state to be the ideal. The nineteenth century was inspired by the ideal of national-state. The greatest thinkers of the present century aspire for a world-state, organised on federal principles. The ideal of a world-state is not a new one. Alexander the Great, the Roman Emperors, the Holy Roman Emperors and Napoleon were all haunted by this ideal. But they thought of realising this ideal by imposing their own will on the rest of the world. This gave rise to discontent and

Statement  
of the  
historical  
theory

The Ideal  
State

Nation-State  
vs  
World-State

brought about the ruin of their scheme. If the nation-states of the modern world can, by any means, be federated together, each retaining its distinctive culture and civilisation, much of the misery of the world, due to war and economic rivalry, would come to an end. The League of Nations stood for this ideal, but the European statesmen failed to show their sincerity of purpose in their attempts to realise it.

## CHAPTER III

### SOVEREIGNTY OF THE STATE

#### 1. Meaning and Different uses of the term 'Sovereignty'

The concept of sovereignty has been called the very basis of modern political science "Sovereignty is the supreme will of the state", says Willoughby Woodrow Wilson. **Sovereignty, a legal concept** has called it "the daily operative power of framing and giving efficacy to the laws" Burgess characterises it as "original, absolute, unlimited power over the individual subject and over all associations of subjects" This description of sovereignty might appear to sanction the tyranny of the state and to involve the sacrifice of individual rights But a careful analysis will reveal that there is absolutely no contradiction between individual liberty and sovereignty

The state comes into being when sufficient spirit of unity exists to organise a people, to create a government and to enforce laws It must contain some persons or body of persons whose commands receive obedience, and who can, if necessary, execute those commands by means of force There can be no state unless there be such a body The commands thus given are called laws Legally, therefore, **Absolute power of the state** the state is unlimited because it is itself the source of legal enactment If it imposes any limit on itself, it may remove the restriction whenever it thinks fit The absolute and unlimited power of the state is necessary to maintain rights of individuals and of associations within the State Had there been no such authority, the poor and the weak would have been entirely at the mercy of the strong, and a condition of perpetual warfare and anarchy would have followed It follows, then, that there can be no right against the state, because the state is the source of all rights and the enforcer of all obligations

The term 'Sovereignty' is used in popular phraseology in a variety of senses Thus, the word sovereign is often used to designate a king or monarch Though the final power of decision lay with king during the days of despotic monarchy, yet at present the king has become in some countries a part of the machinery of Government He is called sovereign only in a fictitious sense. He is supposed to personify the power and majesty of the state, though in actual fact the real sovereignty rests in other hands **Titular and actual Sovereign**

Another distinction is made by some writers between De facto and De jure sovereign. It is sometimes found that the supreme power in the state is seized by a usurping king, a self-constituted assembly, a military dictator, or even a priest or a prophet Cromwell, after he had dissolved the Rump, Napoleon after he had overthrown the Directory, the English Convention Parliaments of 1660 and 1689 are examples of actual sovereignties which rested upon no legal basis. Lord Bryce observes,—“the person or body of persons who can make his or their will prevail whether with the law or against the law, he or they, is the De facto ruler, the person to whom obedience is actually paid.” De jure sovereignty, on the other hand, is that which the law recognises. De jure sovereign has the legal claim to obedience. It is often found that the De facto sovereign converts his rule to De jure sovereignty by election or ratification.

Austin, however, refuses to recognise the distinction between De facto and De jure sovereignty, on the ground that the will of the sovereign itself is law. He holds that governments may be De facto or De jure, but these terms can not be applied to sovereignty. The adjectives lawful and unlawful can not be imputed to it. The only law, he said, by which a person or a body of persons can be sovereign is its own law, its own command or will, and hence to say that a person or body is the De jure sovereign is tantamount to saying that it is legal because it declares itself to be. According to Austin's view governments may be De facto or De jure, but these terms can not be imputed to sovereignty.

Austin criticises the distinction

The sovereignty of the State has got two aspects—legal and political. These are the two different manifestations of one and the same sovereignty through two different channels.

The legal sovereign is that determinate authority which by law has the power to issue the highest commands of the State.

Theoretically speaking, it can override the prescriptions of the divine law, the principles of morality, and the mandates of public opinion. Whatever the supreme law-making body decrees must be accepted as legal and must be applied by the Courts. A Judge must apply a law, though it may be morally unsound and condemned by public opinion. Lawyers and Courts refuse to look beyond the legal sovereign. But Woodrow Wilson has well observed that “Sovereignty, as ideally conceived in legal theory, nowhere actually exists.” He elucidates this remark by certain concrete examples.

Legal Sovereignty

In England, legal sovereignty rests with the King-in-Parliament. There is no legal limit to the power exercised by Parliament. It is said to have power to do everything except make

a man a woman or a woman a man It can prolong its own existence as it did by the Septennial Act of 1716 As Dicey remarks, it can, legally speaking, adjudge an infant of full age, it may attain a man of treason after death, it may legitimize an illegitimate child Parliament can legally make a law compelling the people to kill one another But in actual practice, Parliament dares do nothing that seems to be against principles held to be sacred in the sphere either of constitutional privilege or private right "Should Parliament violate such principles, then action would be repudiated by the nation, their will failing to become indeed law, would pass immediately into the limbo of things repealed; Parliament itself would be purged of its offending members Parliament is master, can utter valid commands, only so far as it interprets, or at least does not cross, the wishes of the people"

Practical limitations on the powers of the sovereign body

Before the Bolshevik revolution, the Czar was said to have possessed almost unlimited power But even his supremacy was actually limited by concessions to the spirit of his army, to the prejudices of his court, and to the temper of the mass of his subjects It follows, then, that the most despotic monarchy as well as the most powerful assemblies are practically limited in power That which limits the legal sovereign is the political sovereign "Behind the sovereign which the lawyer recognizes", observes Dicey, "there is another sovereign to whom the legal sovereign must bow"

No despot can exercise unlimited power

### Political Sovereignty

Prof Gilchrist has defined the political sovereign as "the sum-total of the influences in a state which lie behind the law"

Manifestation of Political sovereignty

The political sovereign may be roughly described as the power of the people It manifests itself by voting, by the press, by platform speeches, by intelligent conversation and by various other ways, which can not be easily defined It is indeed the controlling power behind the organ through which the will of the state is given legal formulation, but it is rather vague and indeterminate

In a small city-state, where all the citizens can meet in a place and express their opinion freely, the legal and political sovereignty practically coincide But in the modern states there exists everywhere a distinction between the legal sovereign and the political sovereign. The political sovereign is not determinate because it is not organised, when it is organised it leads to legal sovereignty McKeechne observes that "the will of the legal sovereign is or should be the authorised embodiment or manifestation of the will of the political sovereign If the popular will is accurately expressed by

Not a determinate authority

the legal sovereign, the power of the people is effective, otherwise it is not \*\*

## II. Attributes of Sovereignty

The attributes of the legal sovereignty are stated to be permanence, exclusiveness, all-comprehensiveness, absoluteness, indivisibility and unity

The sovereignty of the state is permanent in the sense that as long as the state exists sovereignty continues without interruption. If at any time sovereignty is lost, the state itself ceases to exist. There might be change in the bearer of government or a revolution might change the organisation of state, but that would mean only a transfer of sovereignty, not its cessation. Permanence

As the state is one organic whole, there can be but one supreme power in the state. This idea is expressed by drawing attention to the exclusiveness of sovereignty. Sovereignty can not be divided. Sovereignty is indivisible

Every individual and every association of individuals must be subject to the sovereign power of the state. Foreign ambassadors, envoys etc., living within a state enjoy indeed immunity from the jurisdiction of the state, but the power which every state enjoys of expelling the diplomatic representatives, proves the universality of the sovereignty of the state. All-comprehensiveness

By attributing the quality of absolutism we mean that sovereignty is legally unlimited. If it is limited by any superior power then that power is sovereign. But there must be some supreme power in the state. "The principle of entire legal independence of state as a consequence of sovereignty", says Willoughby, "is not contradicted by the existence either of international law or constitutional law". Absolutism

\* Here it should be noted that Austin fell into a grave error by attributing legal sovereignty to the body of the electorate. The voters are empowered to choose legislators at intervals, but they can not pass laws nor negative bills except in states where referendum and initiative are prevalent. The electors may be said to be political sovereigns but not legal sovereigns. Some writers reject the distinction between legal and political sovereignty on the ground that it seems to recognise a dual sovereignty in the state. But as a matter of fact such a distinction does not mean the recognition of two rival and hostile powers in the State. The legal and political sovereigns are the manifestations of one and the same sovereignty, which is an abstract ideal, working through different channels. There can not be any long continued hostility between the legal and the political sovereigns. If it is found that the legal sovereign is persistently flouting the opinion of the political sovereign, popular discontent will rise to a climax and a reorganization or reconstruction of the legal sovereign will be undertaken. Sovereignty is an abstract ideal



International regulations or treaties between different states do not impair the sovereignty of the states consenting to obey such regulations or treaties. The consenting parties voluntarily accept these, by their acceptance no power is created superior to that individually possessed by the contracting parties. No legal means have as yet been provided for enforcing international regulations.

Constitutional law too does not restrict or impair the sovereignty of the state. By constitutional law we understand those rules that define the organisation of the state, and the extent and manner of exercise of governmental powers. It does not purport to control the state. Constitutional provisions are self-set by the state, and the same power that has decreed them still has the power to alter or abolish them, though this alteration or abolition must be done in the formal and legal way.

The sovereignty of the state is inalienable, i.e. its essential elements can not be ceded or parted with. "Sovereignty", says Lieber, "can no more be alienated than a tree can alienate its right to sprout or a man can transfer his life and personality without self-destruction". There might be a legal transfer of the power of exercising sovereignty from one body to another, such an act would be the surrendering of power by a particular governing body, but it would not be a parting of sovereignty by the state.

### III. History of the Theory of Sovereignty and Austin's Contribution to it

The theory of sovereignty emerged gradually with the beginning of the modern age in the sixteenth century. In the Middle ages the idea of the state as externally independent of any compulsion or interference on the part of other states, and internally exercising absolute authority over all individuals or associations of individuals could not arise owing to the existence of three factors. These counteracting factors were the belief in the existence of a universal empire, prevalence of feudalism and belief in the Law of Nature. So long as the belief in the existence of a universal empire in the shape of the Holy Roman Empire prevailed, it was impossible to organise independent and equal states. In the feudal society ties of personal dependence bound individuals into groups, and similar bonds of a larger scale held these groups together. As the Law of Nature was supposed to be superior to all human laws, the concept of sovereignty, having power to make laws in contravention of Divine and Natural law could not arise. But towards the end of the middle ages the Empire became shadowy as a result of its

long-drawn conflict with the Papacy, the nobles became weak and kings became supreme within their territories by wars, conquests and alliances. The most compact and powerful monarchy arose in France. And it was in France that the theory of sovereignty was for the first time enunciated.

Jean Bodin, the French writer, propounded this theory in his book *De la Republique* in 1576. He defined Sovereignty as the "supreme power over citizens and subjects unestrained by the laws." He preferred that sovereignty should reside in one person, though there is nothing to stand in the way of vesting it in many. Bodin

Hugo Grotius, the Dutch writer, emphasised the external sovereignty of the state in his great work on International Law, published in 1625. He considered all states as equal and independent with supreme jurisdiction within their boundaries. States were regarded by him as persons dealing with each other as by contract. Grotius

In the middle of the seventeenth century Hobbes wrote that the sovereign is the person or body to whom the individuals in the state of nature agree to surrender their natural rights and liberty. He, however, contounded the legal absolutism of the state with governmental absolutism and identified the subordination to civil authority with subjection of the people to particular rulers. Hobbes

It is to Rousseau that the modern theory of sovereignty owes its immediate origin. It was he who conceived the sovereign as absolute, infallible, indivisible and inalienable. But this sovereign is not a person or a body of persons, but the General Will. Rousseau

The most notable contribution to the theory of sovereignty has been made by John Austin in his book on Jurisprudence, published in 1832. He states the doctrine thus,—"If a determinate human superior, not in the habit of obedience to a like superior receive habitual obedience from the bulk of a given society, that determinate superior is the sovereign in that society and the society, including the superior, is a society political and independent." From this statement of the theory Prof. Gulchrist has drawn the following conclusions — Austinian theory of sovereignty

(1) "The superior or sovereign must be a determinate person or body, therefore, neither the general will nor all the people taken together can be sovereign."

(2) "The power of the sovereign is legally unlimited or absolute, for a sovereign can not be forced to act in a certain way by any command of his own. He makes his own laws."

(3) "Sovereignty is indivisible. It cannot be divided between

two or more persons or bodies of persons acting separately, for, if so, one would be limited in some way by the other, which would be a superior power, and therefore, the real sovereign "

Maime, Clark, and Sidgwick are foremost among those who have criticised Austin's theory that sovereignty must reside in a determinate body. In the first place, it has been pointed out by most of them that "the theory is inconsistent with the idea of popular sovereignty". It also ignores public opinion and takes no account of what we call political sovereignty. Further more, Austinian theory errs in treating all laws as being merely "Command". It ignores the great body of customary law in a country and exaggerates thereby the single element of force to the neglect of obvious historical facts. Sir Henry Maime criticised this doctrine on the ground that it is not warranted by actual or historical fact. He cites the example of Ranjit Singh, who inspite of his extensive power never "issued a command which Austin would call a law". The rules which regulated the lives of his subjects were derived from their innumerable usages, and these rules were administered by domestic tribunals. Austin had answered this objection in anticipation by laying down the maxim that "what the sovereign permits he commands". But in such cases as that of Ranjit Singh this maxim does not really fit in. For in this instance the sovereign has no alternative but to "permit" what he can not alter.

Leacock further points out the limitation of Austin's doctrine in the following words,—  
 "The analysis of political power which it offers is not meant as an explanation of the ultimate source, the first cause of authority, but merely intended as a universal abstract formula, indicating the method of its operation in the modern world. To accept the doctrine in this sense, is, of course, necessarily to restrict the connotation of the terms state and law. The term state will include only communities possessing the requisite finality of organization, and fixed relations of command and obedience. A law will connote only a command issued, either directly or indirectly (through deliberate refusal to contravene an established usage) by the sovereign organisation of the state."

Recently the upholders of the Pluralistic doctrine of Sovereignty have attacked the Austinian doctrine. As the subject is very important, we shall devote a separate section to this discussion.

Austin's chief error lies, as Prof Garner has aptly pointed out, in giving much stress to the legal aspect of sovereignty,

and in ignoring the forces and influences which lie at the back of the formal law—a very natural mistake for a lawyer to make. Nevertheless as a conception of the strict legal nature of sovereignty, Austin's theory is, on the whole, clear and logical, and much of the criticism directed against it has been founded on misapprehension and misconception.

Prof  
Garner's  
view

#### IV. Popular Sovereignty

Sovereignty is the essential characteristic of the State. But a good deal of confusion prevails regarding the repository of sovereign power. The theory which is vaguely stated as that of popular sovereignty is widely prevalent. It was stated on the eve of the modern age by the antimonarchical writers like William of Ockham, Marsiglio and Althusias. Rousseau expounded this theory with great force but bad logic in his epoch-making work, 'the Social Contract'. According to Rousseau, by the original compact the people themselves in their collective capacity became the sovereign and continued to be so. He truly discerned that government is but the servant for executing the will of the state, but he made this will practically identical with popular demand. Rousseau thus destroys the permanence of all government and its authority. His theory, however, had great influence on the American and French Revolutions, both of which reiterated the theory of popular sovereignty in their declaration of Rights of Man.

Rousseau's  
advocacy of  
popular  
sovereignty

In the nineteenth century, the belief in the Social Contract and Law of Nature was given up. But the doctrine of popular sovereignty has received a new orientation from the pen of Professor Ritchie. His theory may be stated thus—directly through electoral power and indirectly through influence, intimidation, or potential rebellion, the people exercise sovereignty. They possess the physical power, which in the last resort is bound to prevail in any quarrel. If sufficiently provoked, they can annihilate the existing government. They are ultimately the masters. "Sovereignty, in last resort, is a matter of force and depends upon the ability to secure or to compel obedience, hence, the power that in case of a struggle would have the strength to command obedience is the sovereign." Any form of government to which the people submit exists therefore only by virtue of their tacit consent.

Modern  
theory

#### Criticism of the theory of popular sovereignty

The theory of popular sovereignty, however, can not stand the test of logic. Gettel observes that the sovereignty of the people

is, in fact, by the very definition of the state, a contradiction in terms "The state is a people organised by means of government which makes and enforces law" If by the term "people" we mean the sum-total of the individuals composing the state, we have "the state resolved into its atoms, and supreme power ascribed to the unorganised mass or to the majority of these individuals" "If, however, by the people we refer to them as united and politically organised we have only repeated the proposition that sovereignty is a necessary ingredient of the state, for, a people politically organised is the state"

The concept of popular sovereignty is illogical

Moreover, the theory of popular sovereignty assumes that superiority in actual physical force necessarily rests with the mass of the people But millions of organised men without discipline, weapons and modern equipments can be easily overawed by a few thousands of well-organised soldiers Numerical majority has not of necessity always the stronger power If it is said that sovereignty lies with the strongest group of persons trained to act together then it must be supposed that the group of these men obey a person or body of persons In this case too sovereignty rests with the person or body of persons, who are thus habitually obeyed

Majority does not always command greater force

It would be wrong too to suppose that under normal circumstances the exercise of suffrage is an indication of popular sovereignty In the modern states not more than thirty per cent of the entire population (including minors, paupers, lunatics, criminals etc) enjoy the right to vote A majority of these electors would be but little more than fifteen per cent of the entire population. Even these electors can not exercise supreme power without organisation, and if they organise themselves, the heads of the organisation would have the sovereign or supreme power, and not the electors themselves In any case, we come to the old conclusion, that unless a people become politically organised there is no sovereignty

Suffrage is no safe criterion

On close analysis, it is found that sovereignty of the people is nothing more than the sovereignty of public opinion Sovereignty is a political term, implying the power to compel obedience, and it can be exercised by society only in its politically organised capacity Force is an incident of sovereignty indeed, but "the highest ideal of statesmanship is to render the actual exercise of such force as seldom necessary as possible, and the extent to which this aim is attained will depend largely upon the degree in which state action corresponds with the desire of Public Opinion or the General Will"

The doctrine of civil liberty

## V. Theory of Limited Sovereignty

The theory of absolute sovereignty of state propounded by the Hegelian and Austinian schools of thought has been attacked by many writers on various grounds. Bluntschli asserts that "even the state as a whole is not almighty, for it is limited externally by the rights of other states and internally by its own nature and by the rights of its individual members."

Some of the limitations pointed out by these writers are not legal in character, but are religious, moral or political. Martens recognises God as "legal superior" over a state, others think that the "divine law" limits the sovereignty of state. Some writers maintain that the sovereignty of state is limited by moral laws and will of the subjects. The state can not override the moral convictions of the people. If their ideas and sentiments are not respected by the Government, that Government is not likely to last long. "Governments have always rested and must rest", says Bryce, "if not on the reflection, then on the reverence or awe, if not on the active approval, then on the silent acquiescence of the numerical majority."

Moral and  
legal  
limitations

From the legal point of view these moral sentiments have no binding force behind them. They are merely self-imposed restrictions on the exercise of sovereign power of the state. The sovereign authority does and should respect them on the ground of expediency. Garner rightly points out that "the laws of God, the dictates of humanity and reason, the fear of public opinion, and other alleged restrictions on sovereignty have no legal effect, except in so far as the state chooses to recognise them and give them force and validity."

These are  
self-imposed  
restrictions

Some writers are of opinion that in states, having written and rigid constitutions, the sovereign can not override the provisions of the constitution. Amendment of the constitution requires certain procedure to be followed and this is prescribed in the constitution itself. In those states again where conventions play a great part in legislation, they are as good as constitutional provisions. In Great Britain Parliament does not ignore the accepted conventions. These conventions are regarded as practical restrictions on the freedom of action of the sovereign.

Limitations  
of Constitu-  
tional and  
Positive Law

Some writers contend that the action of the sovereign is limited by the positive law of the land, which is supposed to be anterior to the creation of the state and as such binding on the sovereign power. But all laws, positive or constitutional are the creations of the sovereign power. They can be changed and are changed by the sovereign.

Confusion of  
state with  
government

authority. The critics of absolute sovereignty are misled by a confusion of State with Government. Government is not sovereign but the State is sovereign. "When the state came to be organized outside of the government," says Garner, "and sovereignty was understood in its true light, namely as an attribute of the former rather than of the latter, it became an easy matter to reconcile the doctrine of an unlimited sovereignty with that of a limited government."

It is maintained that the sovereignty of states is restricted by the rules and prescriptions of International Law. Treaty obligations impose definite restrictions on the freedom of the sovereign in respect of matters of international importance. But the states can violate these treaties, even though there are possibilities of reprisal from those nations who are affected by such action. Jellinek and other German writers assert that the states respect the treaty obligations only out of a sense of honour; these are merely cases of 'auto-limitation'. There is no sanction behind International Law. So far as the question of sovereignty is a mere juristic one, this contention must be regarded as a valid one. But in a practical life no state, however strong it might be, can persistently violate international treaties and conventions. In the present state of international chaos and anarchy much importance can not be attached, however, to the limitation of international law on the sovereignty of state. It is probable that the more effective attack on sovereignty will come, in the future, from the exponents of international law and the principle of a world community of legal values which transcends the state.

## VI. Four Ideas of Juristic Sovereignty

The history of the doctrine of sovereignty given above shows that it has been subject to a rapid evolution. The diversity in the theories of sovereignty is reflective of different concepts of the proper organization of political unity. Sovereignty is and has been a problem in the constitutional organization of the state. The test of the truth of a theory of sovereignty, therefore, should in no sense be its universal applicability or its logical self-consistency. The value of a theory of sovereignty should lie in its appeal to the public lawyers of a particular state. There are four outstanding ideas of juristic sovereignty, namely, the French, the English, the German and the American.

The French conceptions must be divided into two classes—those prevailing before the Revolution and those coming after. Before the Revolution sovereignty was vested in an organ of

Is any theory universally applicable?

the state, in the monarch, and the peculiar characteristic of the monarch was that he was generally above positive restrictions. The power and the will of the monarch <sup>The French idea</sup> were the means of escape from warring civil and religious factions, and the unification of the feudal claims of the nobility in the higher synthesis of the state. Bodin as contrasted with Hobbes recognised always a fundamental law or laws behind the sovereign organ. He rendered a great service by formulating a stable constitutional principle for the attainment of some sort of coherence in political life.

The French conception of sovereignty since the Revolution has been that of national sovereignty. This principle grew out of the social contract and natural rights theories of the epoch. The primary assumption is, of course, what we <sup>National sovereignty</sup> may call popular sovereignty, but popular sovereignty itself does not constitute the idea of national sovereignty. If public opinion is the primordial and necessary political force, legal sovereignty should be located in the nation, from which comes this opinion. By recognizing sovereignty in the nation public opinion is given a superior force, a precise expression and a legal authority.

The traditional British doctrine of sovereignty is like that of Bodin, with this difference only that the British writers do not accept the juristic character of fundamental constitutional principles. The Austinian theory recognises <sup>The British idea</sup> the sovereignty of the highest organ of the government. Legal sovereignty is not vested in the state as a legal person or in the nation, nor is it vested in the monarch or a class, but in the legislative power which includes the King, the Lords and the Commons. The British doctrine thus excludes monarchical and national sovereignty alike.

The German interpretations of the principle of sovereignty are the most complicated of all, because of the more entangled situation with which the German jurists had to deal. Not only was the position of the monarch more distinct legally than in England, but there was also the problem of federalism which deprived the idea of sovereignty of some of its possible coherence. The German theory is the theory of state sovereignty <sup>German theory</sup>. Sovereignty is an attribute of the state as a juristic person with a legal will. The monarch thus becomes a representative of the state will, but the sovereignty of the state itself is not inherent in him. In the opinion of Bluntschli, however, sovereignty is not vested exclusively in the state, since a remaining but different sovereignty of the monarch is accepted. The German theory developed likewise the idea of the non-sovereign state to enable the doctrine to be held that though the German



states had lost their sovereignty in the Reich they had not lost their statehood. This conception is, of course, a peculiar adjustment of the Germans to their own situation. The German theory is, in short, a denial of the sovereignty of an organ, and it is likewise the negation of the principle of popular sovereignty or national sovereignty.

The American theory may be called the doctrine of divided sovereignty. Sovereignty was divided between the states and the United States by the constitution itself, though there was conflict until after the Civil War as to the proper organ or organs to settle disputes of competence. The American idea of the state rights view was that the states should make such decisions while the nationalists believed the Supreme Court to be the proper organ. While German theory developed the idea of the nonsovereign state, many of the American publicists and judges continued to look upon the component commonwealths in the federal union as states and as having sovereignty.

## VII. Theory of Non-sovereign State

The peculiar character of the German Federation inspired a number of jurists to formulate a theory of non-sovereign state. Leband argued that a state could still be a state, even if it were not sovereign, because it could still be "the independently empowered bearer of the most comprehensive and important public supreme authority." In other words, a member of a federation might have less than the independence elsewhere enjoyed by unbound states, yet compared with its colleagues and its own domestic groups it was an independent and supreme master, and hence deserves the name of state. Writers of this school draw a line of distinction between sovereignty, the power of the state to determine the limits of its own competence, and state power, or the right to rule. Jellinek contends that the Federal movement is a peaceful mode, hence there was no violent abolition of the hitherto existent and legitimate authorities. The members of the Federal union ceased to be sovereign when they agreed to become parts of the new union, but they did not cease to be states.

Gierke and Prenszt hold that in actual modern conditions of social life, there is a series of associations of graded importance, and sovereignty lies in the whole arrangement of inter-related groups, small and large, and that if the appellation of state must be applied to the members, it must be state without sovereignty.

Garner does not admit the validity of the term "non-sovereign

state", as according to him sovereignty is an essential characteristic of state. He is, however, cautious enough to admit that "whether sovereignty is an essential characteristic of the state depends mainly upon our notion of the thing itself and our conception of the nature of the state". He argues that mere possession of power to govern is not a criterion of statehood, otherwise the self-governing Dominions of the British Commonwealth would have possessed the quality of states. But it is doubtful whether after the passing of the Statute of Westminster and the recognition of their statehood by the League of Nations, this sort of argument can be convincing.

Non-sovereign state, a contradiction in terms

The whole problem has been dismissed by Dr. Herman Finer with the following observation: "We have at any rate, seen how incapably definition has dealt with the diverse forms and institutions of actual Federations, and the political scientist must create his definition from the facts, which are always changing, while the jurist is apparently condemned to look for the essences which are so essential that they exclude at least three-fourths of what is politically most important."

Finer's views

### VIII. Theory of Dual Sovereignty

The theory of Dual Sovereignty was upheld by eminent publicists like Hamilton and Madison at the time of the adoption of the Constitution (1789) of the United States of America. It was argued in the *Federalist* that "the equal vote allowed to each state is at once a constitutional recognition of the portion of sovereignty remaining in the individual states, and an instrument for preserving that residuary sovereignty." The Articles of the Confederation had, indeed, explicitly stated that the "States should be regarded as distinct and independent sovereigns", but the constitution itself is silent on this important point. Freeman, the distinguished English historian asserted that "the complete division of sovereignty we may look upon as essential to the absolute perfection of the federal ideal." The Mexican constitution expressly states that the component states of the Federal Union are "sovereign" in all that concerns their internal affairs.

American situation

Calhoun vigorously attacked the doctrine of dual sovereignty. He said "Sovereignty is an entire thing, to divide it is to destroy it. It is the supreme power in the state, and we might just as well speak of half a square or half a triangle as of half of sovereignty." It seems that the upholders of the dual sovereignty theory confused sovereignty with its emanations and thus ignored the vital distinction between the state and government.

Indivisibility of sovereignty

During the American civil war, the Southern States laid great stress on the fact that their areas possessed the name "state."

They contended that wherever there was a state there was sovereignty. Those who were upholding the power of the federal government argued that America had never known individual states, since the colonies had proceeded direct from subordination to England to subordination to the fellowship which fought the War of Independence.

The defeat of the Southern States gave a death blow to the theory of divided sovereignty, which concept is now dying a slow death. Garner opines that sovereignty cannot be divided, but its emanations or manifestations can be divided and expressed through various mouthpieces and carried out through a variety of organs. In the federal union "the sovereign will expresses itself on certain subjects through the medium of central government and on certain other subjects through the organs of the individual political units composing the federation." In fact, the older theory of divided sovereignty has been replaced by a theory of the legal sovereignty of the constitution which is exercised through a complex of state organs.

## IX. Location of Sovereignty in Federal States

Eminent writers like Cooley, Story, Tocqueville and Hurd hold that sovereignty is located in the federal as well as in the state governments. They argue that the federal government is found to have autonomy in certain spheres, while the states have autonomy in others. This theory, however, is opposed to the conception that sovereignty is incapable of division. A federal union makes one and only one state. The component parts of the federal union lose their sovereign power as soon as they become members of the federated unions. In one state there can be only one sovereignty. "Sovereignty," declares Calhoun, "is an entire thing, to divide it is to destroy it. It is the supreme power in a state, and we might just as well speak of half a square or half a triangle as of half a sovereignty." In a federal union the constitution alone can determine the competence of the central authority and that of the component states. The federal government as well as the governments of the states can not go beyond the power conferred on them by the constitution.

This leads to the theory that sovereignty rests with the organisation that can make or amend the constitution. According to the upholders of this theory, there is no higher authority possible than that which creates the constitution. That authority

expresses the direct will of the state, and is therefore sovereign. In Great Britain, sovereignty rests in the King-in-Parliament, in France in the National Assembly. In the U S A the procedure of amending the constitution is thus laid down in Article V of the Constitution,—“The Congress, whenever  $\frac{2}{3}$ d of both Houses shall deem it necessary, shall propose amendments or on the application of the Legislatures of  $\frac{2}{3}$ d of the several states, shall call a Convention for proposing amendments which in either case shall be valid when ratified by the Legislatures of  $\frac{2}{3}$ th of several states, or by Convention in  $\frac{2}{3}$ ths of the commonwealths.” Thus, two different processes are prescribed for amending and ratifying the constitution. In practice, all amendments have been proposed by Congress and ratified by the state legislatures. So it may be said that neither the people of the United States, nor the people of the states have, in fact, participated in the exercise of the sovereign power.

The people do not exercise sovereign power in the U S A

This theory of locating sovereignty in the constitution-amending authority suffers from certain defects. First, the power that can amend the constitution lies mainly dormant and latent and acts only intermittently at infrequent intervals. Logically, the sovereign power in the state can not thus lie dormant. Secondly, the organs that actively express the state's will are not simply the authority that makes or amends the constitution, but also the organs through which at present times that will is expressed. Thirdly, the sovereign authority must be absolute but the constitution-making authority can be put in motion by the government alone and can only act in the manner legally prescribed. Thus the constitution-making authority becomes limited in power.

The constitution-making authority is not absolute

There is a third theory of the location of sovereignty. Woodrow Wilson holds that sovereignty rests with the law-making authorities. They include (1) Legislature—national, Commonwealth or local, (2) Courts, so far as they create and not merely interpret law, (3) Executive officers, so far as they create law by proclamations, (4) Conventions when they sit to amend the constitution, (5) Electors when they exercise powers of referendum and plebiscite. “Sovereignty is considered here as the daily operative power of framing and giving efficacy to laws. It lives, it plans, it executes. It is the organic organisation of the states as of its law and policy, and the sovereign power the highest originative organ of the state.”—(Wilson). But it may be pointed out that sovereignty is an attribute of the state and not of the various organs of the Government which share in the expression of the will of the state. The conclusion is, then, that the sovereignty is a legal and

Does sovereignty lie in law-making authorities?

abstract conception ; and that it resides in the state and state alone

## X. Recent Attacks on the Theory of Sovereignty

The theory of the sovereignty of the state as one, indivisible and unlimited has recently been attacked by the Guild Socialists, Syndicalists, Anarchists and others. In the place of one indivisible sovereignty, they like to emphasise the sovereignty of the different groups that flourish in the society, hence they are known as the Pluralists. This point of view received a great stimulus from the writings of the German jurist, Otto Gierke. In England it has been put forward by Figgis, Matland, Barker, Laski and MacIver.

The fundamental issue between the upholders of Monism (one and indivisible sovereignty of state) and Pluralism rests on the problem of the nature of law. The Monists contend that at least one aspect of the problem of the law must be a formal examination of the conditions under which a declaration of a legal value is to be accepted. The Pluralists contend that no unity of the state can be established on the principle of formal unity, that whatever unity is discovered in the state must be found in the real forces which constitute the state.

Laski in his "Grammar of Politics" defines sovereignty as power rather than as legal will in the monistic interpretation. He argues that since the power of the state is not absolute, the whole superstructure of monism falls to the ground. Groups have power because they retain the loyalty of the individual, and thus power of the groups is a counterweight to the power of the state. The final positive principle of the functional state is that society is federal rather than unitary. John Dewey and Leon Duguit think that the formal legal unity of the state is illusory, for the law is not found in the formality of its declaration but in the coincidence of rules with social forces.

Krabbe seeks to establish a legal principle superior to the state. According to him state action can be declaratory of the law but not creative of legal validity, and therefore the state is as much bound by the law as is the individual. The legalist doctrine speaks in terms of power and not of service. But power is only an instrument of service. No one ever regards the service of the state as unlimited and therefore the conception of unlimited sovereignty might give rise to tyranny. Owing to the rise of important economic associations, like the labour unions, the state can no longer pretend to be the one all-powerful agency of social life. There are now-a-days groups for the promotion and care of industrial, political, religious and other interests. Society

Is the State  
bound by  
law?

has now become more an aggregation of groups than an association of individuals. The Pluralists maintain that the state is only one of the many associations recognised by law. The other associations such as a professional group or a body of believers, exist apart from and prior to the state's act of recognition. Matland points out that the state is practically bound to acknowledge the corporate character and the rights and responsibilities of groups which operate as collectivities, and its formal recognition makes little difference to their character.

The state itself is one of the corporations (an association recognised by law as such). Klabbe maintains that the authority of law is greater than the authority of the state. At any moment the state is more the official guardian than the maker of the law. Its chief task is to uphold the rule of law and this implies that it is itself also the subject of law, that is bound in the system of legal values which it maintains.

The different points of attack on the legalist doctrine have been admissibly summarised by Gertel thus:—"They (the Pluralists) deny that the state is a unique organisation, they hold that other associations are equally important and natural, they argue that such associations are for their purposes as sovereign as the state is for its purpose. They emphasise the inability of the state to enforce its will in practice against the opposition of certain groups within it. They deny that the possession of force by the state gives it any superior right. They insist upon the equal rights of all groups that command the allegiance of their members and that perform valuable functions in society. Hence sovereignty is possessed by many associations. It is not an indivisible unit, the state is not supreme or unlimited." Laski has argued for a system which would recognise the complete autonomy of economic, political, religious and social associations, with the abandonment by the state of any claim to be the sole representative of the general interests of men. He cites specific examples to show how the state failed to carry out its decisions in the face of determined resistance by groups within the nation. Thus during the last European War the British Parliament did not dare to enforce the anti-strike provisions of the Munitions Act against the defiant Welsh miners or to put into operation the Irish Home-rule act against the rebellious Ulsterites. Man, according to him, is a creature of competing loyalties and the state must compete with churches, trade-unions, employers' associations, friendly societies, political parties, and professional associations. He holds that in any instance of conflicting demands the state's pre-eminence

over other associations depends upon the superiority of its moral appeal in that instance

Merriam and Barnes in their "History of political thought—recent times," have shown that inspite of these attacks the

State to  
maintain  
mutual rela-  
tion between  
the associa-  
tions

theory of the sovereignty of state has not been given up and can not be given up We agree that the different associations in the community perform valuable services, and the state should not arbitrarily coerce them But if equality of status with the state be claimed for them, and if sovereignty is denied to the state, who would maintain the mutual relation between these associations? Barker and Laski also admit that the duty of the state is to determine, in general outlines, the constitutions of the several associations. "The State", says Barker, "as a general and embracing scheme of life, must necessarily adjust the relations of associations to itself, to other associations, and to their own members—to itself, in order to maintain the integrity of its own scheme; to other associations, in order to preserve the equality of associations before the law; and to their own members, in order to preserve the individual from the possible tyranny of the group." Laski in his Preface to the Fourth edition of "Grammar of Politics" (1937) says that theory of Pluralism "did not sufficiently realise the nature of the state as an expression of class relations. It did not sufficiently emphasise the fact that it was bound to claim an indivisible and irresponsible sovereignty, because there was no other way in which it could define and control the legal postulates of society It was through their definition and control that the purposes of any given system of class-relations was realised. If the State ceased to be sovereign it ceased to be in a position to give effect to those purposes."

The Pluralists are recognising the force of this argument. Lewis Rockow in an article on "The Doctrine of the Sovereignty of the Constitution" in the American Political Science

Pluralism,  
a theory of  
social  
structure

Review (1931) shows that Pluralistic criticism is becoming more a general theory of the social structure of the state and less an attack of the state as a co-ordinating agency. The Pluralists have rendered valuable services by pointing out the practically limited power of the state and the superiority of law to the state; but unless unlimited authority, in theory at least, be conceded to the state, it would be difficult, if not impossible, to protect the different associations

## CHAPTER IV

### LAW

#### I. Nature of Law

The word "law" is used in various senses. It is often applied to the sequence of cause and effect in the world of phenomena, e.g. laws of gravitation and of chemical reaction. Such laws, known as physical laws, indicate inevitable results that necessarily follow from given conditions. Again, the term 'law' is used to designate rules for the guidance of human conduct. If such a law is concerned with motives and internal acts of the will, it is called moral law. If the laws refer to outward acts, they may be either social laws or political. Social laws are enforced by public opinion, and political laws by the authority of the state. We are concerned here with latter kind of laws, which are designated as positive or civic laws. Such laws may be defined as "those rules of conduct that control courts of justice in the exercise of their jurisdictions. As distinguished from all other rules of conduct that obtain more or less general recognition in a community of men, they are such as have for their ultimate enforcement the entire power of the state." (Willoughby). Professor Holland has thus defined law—"A law is a general rule of action taking cognizance only of external acts, enforced by a determinate authority, which authority is human and among human authorities is that which is paramount in a political society; or, briefly, a law is a general rule of external action enforced by a sovereign political authority."

Different kinds of Law

Definition of Law

Two schools of Jurisprudence

There are two schools of writers on the science of law namely, Analytical and Historical. The Analytical school discusses the nature of law by an analysis of existing laws and by classifying them according to their forms of expression, their comparative validity, and their method of enforcement. Austin is the great leader of this school. He considers all laws as a command of the sovereign. To this definition of law the Historical school takes grave exception. The German writer Savigny is the founder of the Historical school. According to him, customary law exists as law, independently of the state. The function of the state is not to create law but to realise and enforce it.

Woodrow Wilson has further elucidated this point of view in the following words—"The function of the framers of law is a function of interpretation, of formulation rather than of



origination ; no step that they can take successfully can be far apart from the lines along which the national life has run. Law is the creation, not of individuals, but of special needs, the special opportunities, special perils or misfortunes of communities. No 'lawmaker' may force upon a people a law which has not in some sense been suggested to him by the circumstances or opinions of the nation for whom he acts."

Growth of law

Difference of opinion regarding 'source of law'

The difference of opinion between the Analytical and Historical schools is more apparent than real. The two schools looking at the nature of law from two different angles of vision have come to loggerheads. The Historical school used the term "source of law" to denote the mode in which, or the person through whom, the rules that have acquired the force of law have been formulated. The Analytical school used the same term to denote the authority which gives these rules the force of law. The state is the sole creator of law, in the sense that, enforcement by the state is the distinguishing characteristic of law. But at the same time the contention of the Historical school, that a general acceptance of customary rules is necessary, is also true

Law reflects the prevalent conceptions of right and wrong and also the social relationships in the communities in which it is accepted. Thus it serves the purpose of a mirror of the community. From the laws of a community, we can judge its character. But law is also an active force in the sense that it compels men to follow a particular course of outward conduct. The compulsion which it exercises is partly ethical and partly physical. The majority of people obey law, not because they are afraid of being detected and punished if they violate it, but because they consider it as just or expedient. But there are people who do not feel the moral compulsions of law. To this minority of the people law involves a 'Must', and speaks harshly of the power of the state.

Law reflects social condition

Law regulates outward conduct

Character of Law

The ideal purpose of law is to lay down those canons of behaviour the observance of which will maximise the satisfaction of demand. But the actual purpose of law is to fulfil the object of the state, which according to Laski, is to maintain some given system of class-relations in society.

## II. Law of Nature

The concept of the natural law originated with the Greek philosophers. It was thought that the principle of uniformity pervaded the universe and this should provide a number of fixed rules of conduct for the guidance of the action of men. These fixed principles were given the name of

Uniformity in Nature

'laws of nature.' Plato and Aristotle were conscious of such laws and referred to such principles as natural justice and law.

The concept received further development in the hands of the Stoics who understood by it the rule of reason and defined it as the "manifestation of the single and homogeneous spirit of the world." They tried to teach that the laws of the land should be shaped in accordance with this divine reason which pervades all natural phenomena.

Theory of  
the Stoics

After the conquest of Greece by the Romans, this Stoic philosophy of law of nature exerted a strong influence on the legal system of Rome. Formerly, the Romans had their *jus civile* or civil law to guide the affairs of the state, but under the influence of the Stoic philosophy, a system of laws developed under the name of *jus gentium* or law of nations in order to deal with foreigners in Rome. It was gradually recognized that the *jus gentium* was really the law of nature or *jus naturale*, being based on the principles of nature and applicable to all nations. Consequently the *jus civile* of Rome was replaced by this new system of laws. The Christian religion also inculcated the principle of law of God which assumed a sacred significance in the mediaeval period.

*Jus gentium*  
replaced *Jus*  
*civile*

Later, this principle of law of nature formed the basis of the contract theory as enunciated by Hobbes, Locke and Rousseau. They conceived that in the state of nature the law of nature existed. Hobbes was of opinion that the state of nature was a state of constant strife and warfare. Locke, however, conceived the state of nature as a state of perfect freedom and happiness. Rousseau, again, declared that in the state of nature, man enjoyed equal rights and liberty and so in modern society also man must have liberty, equality and fraternity.

Modern  
writers

Though the idealistic philosophers conceived the law of nature in these varied ways there are certain considerations for which the principle does not appear to be very reasonable.

(i) It is not historically true; at no period was man guided by it; (ii) The law of nature has no legal sanction behind it and it makes no difference between laws as it exists in society and law as it should be; (iii) Human nature being imperfect, human institutions can not be perfect and as such the imaginary laws of nature have little applicability for them. At best, as Kant says, the law of nature may serve as a standard of justice.

Law of  
Nature is  
imaginary

As Willoughby observes, the natural law can be interpreted in three different ways: (i) The Law of Nature may refer to the sequence of cause and effect in natural phenomena;

(ii) it may mean the instinctive conduct of human beings, as Huxley and Spinoza conclude; and thirdly

Three different  
ways of  
interpretation

it may mean the principles of conduct which derive their sanctity from divine intention and purpose. In reality, the Laws of Nature have no existence. They are mere ideals about a standard of conduct which should be followed not only in the sphere of individual actions but also in social legislation.

The recognition of the Natural Law may be traced in the practices of modern states. (1) In International Law which was

Influence  
of Law of  
Nature

given a definite shape by Hugo Grotius, it is claimed that the Law of Nature has exerted a strong influence.

Writers on International Law try to make out that it embodies certain rules which states under certain circumstances ought to follow and they should legitimately be compelled to follow on the basis that all states are equally sovereign and that no state should unnecessarily encroach upon the rights of the other and violate the dominant principle of the Law of Nature.

(2) In the system of trial by jury, the principle seems to have been recognized, for it is believed that the several minds may find the dictates of the Law of Nature. (3) In courts of law, judges

very often pass their judgments based on the moral principle of reason and good conscience—which are the principles of Stoic philosophy. (4) In every form of Government, at least the rights of life and property are ensured. This is in accordance with the doctrine of Natural Law.

### III. Divisions of Law

Law may be classified on the basis of various distinctions.

For the purpose of political science, we may divide Law in

Principles  
of division

two different ways—according to the agency through which it is formulated and according to the public or private character of the persons concerned. According to the manner of statement or agency of formulation, Law may be divided into (1) Constitutional Law, (2) Common Law, (3) Statute Law, (4) Ordinances, (5) Administrative Law and (6) International Law.

Constitutional Law is ~~the sum-total~~ of the principles that create government, define the jurisdiction of its different organs,

Constitu-  
tional Law

and prescribe the limits within which the powers of government can be exercised. Constitutional Law may be written or unwritten. It may grow with the growth of the people and formulated by the ordinary law-making body as in England; or it may be created in a special way so that the ordinary law-making body might not alter it as in the U. S. A.

Common Law is that body of legal principles which are derived from custom but are enforced by Law Courts like statute law. The laws that are formulated by the ordinary law-making body

in the formal way are called statute laws, e.g., the laws that are enacted by the Congress in the U. S. A. and Parliament in England. Ordinances are "commands of limited application not necessarily permanent, and usually issued as administrative directions by some department of government."

Common  
Law etc.

In England, in the Self-Governing Dominions and in the United States of America there is the same system of law both for the officials and for the non-officials. In these countries the officials do not enjoy any special immunity and the judiciary can not take any cognisance of the plea of state necessity in extenuation of acts on the part of state officials which are calculated to infringe on the liberty of the subject. This principle is known as the Rule of Law. Opposed to it is the special system of law, known as the Administrative Law or Droit Administratif which is prevalent in most of the Continental states. Administrative law is the body of rules which regulate the relations of the administrative authority towards private citizens, and determines the position of state officials, the rights and liabilities of private citizens in their dealings with these officials, and the procedure by which these rights and liabilities are enforced. It should not be thought that in countries where the administrative law prevails, there is no individual liberty. In France litigation in the Administrative Court is cheap and is executed rapidly. The clear distinction between a "fault of service" and a "personal fault" on the part of the official protects the citizens against the evil consequences of too much official zeal. The rules that are generally observed by states in their dealings with other states are called International Law. We shall discuss its nature in a later section.

Administra-  
tive Law vs.  
the Rule of  
Law

Prof Holland has divided law into Public Law and Private Law. Public Law is concerned with the organisation of the state, delimitation of the powers of government and the direct relations of the State and the Individual. Private Law creates only private rights and obligations, regulates the interests of individuals as such and is enforced by the state. "In Private Laws," observes Holland, "the parties concerned are private individuals, above and between whom stands the state as an impartial arbiter. In Public Law also the State is present as arbiter, although it is at the same time one of the parties interested."

Public Law  
and Private  
Law

Public Law, again, has been divided by Holland into (1) Constitutional Law; (2) Administrative Law; (3) Criminal Law; (4) Criminal Procedure; (5) the law of the state considered in its quasi-private personality; and (6) the procedure relating to the state so considered.

Divisions  
in Public  
Law

## IV. The Rule of Law *vs.* Administrative Law

### Principles of the Rule of Law

The fundamental principles of the Rule of Law as stated by Dicey are —(1) “No man is punishable or can lawfully be made to suffer in body or goods except for a distinct breach of law established in the ordinary legal manner before the ordinary courts” (2) “The rules which in foreign countries naturally form part of a constitutional code, are, in English-speaking states, not the source, but the consequence of the rights of individuals, as defined and enforced by the courts.” Thus, this Rule places the judiciary not only in a condition of freedom from interference on the part of the executive, but also in respect of all the members of the executive. (3) The third Rule makes this superiority clear. “Every official from the Prime Minister down to a constable or a collector of taxes is under the same responsibility for every act done without legal justification as any other citizen”

Three principles of the Rule of Law

The Rule of Law effectively protects individual liberty. No person can be arrested, coerced or imprisoned in any manner which is not justified by the law. If any person feels that he has been wrongly arrested, he can take action against the person who has put him under arrest. If his contention is upheld by the court, the wrong-doer shall be punished and shall have to pay damages. As there is no administrative law in England, the wrong-doer can not be protected by virtue of his official position. The Habeas Corpus Act is another bulwork of individual liberty. If a person is unlawfully arrested by the executive government, the court will, on the application either of the prisoner or of some person acting on his behalf, order the person who is alleged to have kept the aggrieved person in restraint to produce him before the court, so that a proper trial may be held. But in times of national danger or political excitement Parliament suspends the operation of the Habeas Corpus Act and then a person may be detained in prison on mere suspicion.

How individual liberty is protected by it

The Monarch seems to be an exception to this rule, because he can do no wrong. But as nearly every official act of the Monarch is done through some agents, who are personally responsible for the legality of the acts they do, this exception is more apparent than real. In recent times the Rule of Law has been much modified both in England and in the United States of America. The following tendencies in recent developments in England show that side by side with the Common Law Courts, Administrative Courts are gradually being evolved. (1) The Public Authorities Protection

Limitations of the Rule of Law

Act of 1893 provides for the protection of officials from being sued. Similarly the Customs Consolidation Act of 1876, the Lunacy Act of 1890 and the Criminal Justice Act of 1925 protect certain classes of officials from being sued in ordinary courts. (ii) Certain classes of officers such as judges, Justices of Peace, Customs and Excise officers enjoy special immunity from the consequences of their acts at Common Law. (iii) Legislatures in great industrial communities, like Britain, U. S. A., Germany and France are so much burdened with law-making in different matters that they can not compile statutes in such detail as to meet every possible contingency in operation. The result is that "administrative bodies not only find themselves compelled to undertake judicial duties, but also to perform them in such a way that the courts are excluded from scrutiny in their operations." In England it has been decided that, if no particular method is detailed in a statute, the government department concerned with its execution may adopt what procedure it thinks best without interference from the Courts. The National Insurance Act of 1911 establishes a body of Insurance Commissioners appointed by the Treasury who have got the judicial authority to decide all questions arising out of the claim of workman. Similarly, in the United States, it has been decided by the highest Court that "the decisions of the Secretary of Labour in all immigration cases are final." (iv) The head of a government department is not responsible for the official act of his subordinates. Had he been a private citizen under the same circumstances he would have been liable for the action of his subordinates.

### **Droit Administratif**

The French word *Droit Administratif* refers not only to the law covering the relation of the administrative authorities towards private citizens, but also to the whole of the public law relating to the organisation of the state. The word is translated into English as Administrative Law, but the English word is generally used in the former restricted sense. Administrative Courts exist not only in France but also in Germany, Italy and Switzerland. In France there are two distinct Administrative Courts sets of courts—judicial courts and administrative courts.

The judicial courts decide criminal cases and cases of private law, while the administrative courts try cases between the government and its officials, or between private citizens and government officials. The administrative courts are guided not by the Common Law but by the regulations and procedure known as Administrative Law.

### **Alleged defects of Administrative Law and Courts**

Dicey observes that in states where *Droit Administratif* prevails

the ordinary law courts have no jurisdiction in matters at issue between a private person and the state. He further points out that the most despotic characteristic of *Droit Administratif* lies in its tendency to protect officials. Lowell also observes that in France "the government has always a free hand and can violate the law if it wants to do so without having anything to fear from the ordinary courts." A critical study of the recent developments of the Administrative Courts shows that all these charges against them are wide of the mark.

It would be a mistake to think that in countries where *Droit Administratif* prevails there is no protection of the individual against public officials. Various measures have been adopted to secure individual liberty against official encroachments. The Jurisdiction of administrative courts over official action does not extend to all cases. "The ordinary courts have", observes Goodnow, "as a result of statutory provision, the entire control of the matter of expropriation or the exercise of the right of eminent domain. Again, arrests made by the administration are under the control of the ordinary courts as a result of the penal code. It is true also that where the government or a department of the government becomes a party to an ordinary commercial contract the Jurisdiction is in part given to the ordinary courts". The ordinary law courts possess the right of passing judgments upon the legality of regulations and ordinances issued by the executive authority. In France there is an independent court entitled the court of Conflicts which decides in doubtful cases whether the Judicial or administrative department has jurisdiction. To secure impartiality this court is composed of nine members—three chosen by the highest Judicial court (the Court of Cassation), three by the highest administrative court (the Council of State), two more chosen by these six and the Minister of Justice. All the members except the last hold office for three years. Lastly, the clear distinction between a "fault of service" and "a personal fault," on the part of the official, protects the citizen against the evil consequences of too much official zeal.

Individual  
liberty se-  
cured in  
every con-  
stitutional  
state

In conclusion we may state that inspite of differences in legal attitude, constitutional states in modern times do not greatly differ in the ultimate rights secured to citizens through the Judicial department.

## V. The Sources of Law and the Stages in its Evolution

Custom has been the earliest means of social regulation. Custom has not grown in any community by a conscious effort.

but by an imperceptible process of growth as a reflex from the feelings of order, justice, and utility that existed in the minds of the people. But as social relations became complex, custom failed to provide with sufficient promptness the new rules for the regulation of new interests as they arose. Cases in which customary law was inapplicable were referred to for decision to those whose judgments would be weighty and acceptable.

In the earliest communities Custom and Religion were indistinguishable. In early times religion was the one conclusive motive and sanction of all social order. The functions of father, chief and king were based upon deeply religious conceptions. The early law of Rome was little more than a body of technical religious rules, a system of means for obtaining individual rights through the proper carrying out of certain religious formula. But as in customary so in religious law necessity arose with the complexity of society for adjudication of rights.

It is the judge who applied the customary and religious laws to particular cases. But when different tribes began to come in contact with one another, there arose conflicts between their customs. The wisest men in the community decided such cases of conflict by analogy from old customs, and by strained constructions. Their decisions were accepted not only for the particular case in question but for all similar cases. These became judicial precedents and consequently a source of law.

With the growth of society new cases of conflict began to arise. Rules that have been definitely established were not applicable in certain cases, and if they were applied strictly, they failed to satisfy the better sense of justice that had developed in the minds of the people. In such cases judgments had to be delivered according to common sense or fairness. Such judgments became known as Equity. Sir Henry Maine has defined Equity as "any body of rules existing by the side of the original civil law, founded on distinct principles and claiming incidentally to supersede the civil law in virtue of a superior sanctity inherent in those principles."

The writing of jurists or scientific commentators of the legal science often prove to be a source of law. Their opinions are advanced as arguments and not as decisions. But "the authority of the commentators is established, just like a judge-made decision, by frequent recognition."



The most important and prolific source of law is for us of the modern time, the deliberate formulation of new laws by the legislative organ of government. But the state entered into this field in comparatively recent times. "We may say, indeed", observes Willoughby, "that until the seventeenth century A. D. the law-making powers of government were exercised almost solely in the field of public and administrative law; the private relations between subjects being left to the control of custom and courts, or to local administrative agents acting in their judicial capacities."

Thus we have seen that "custom is the earliest fountain of law but Religion is a contemporary, an equally prolific, and in same stages of national development an almost identical source. Adjudication comes almost as authority itself, and from a very antique time goes hand in hand with Equity. Only Legislation, the conscious and deliberate origination of Law, and Scientific Discussion, the reasoned development of its principles, await an advanced stage of growth in the body politic to assert their influence in law-making"—(Wilson).

## VI. Development of Law in the West

The western countries have derived their legal system from two sources—the Roman and the Teutonic. The system of custom and law brought in by the Teutonic invaders of the Roman Empire merged into the Roman system which they found prevalent and this fusion has given rise to the legal system of the West.

At first Roman Law was only a body of ceremonial and semi-religious rules governing the relations of the privileged patrician gents to each other and to the public magistrates. It was not known to the masses or the plebeians. In course of time the plebeians grew discontented and at their demands the celebrated Twelve Tables were published. The Twelve Tables became the corner-stone of the whole structure of Roman Law. The Tables were interpreted to suit new cases by the Pontiffs and thus the Roman Law began to grow. Then in the middle of the fourth century B. C. the office of the Praetor was created. The Praetor used to announce some new rules of adjudication at the beginning of his year of office. Through the successive edicts of Praetors the Roman law attained an immense growth. When foreigners in large number began to settle in Rome and Rome began to make conquests, the post of a

new Praetor for foreigners was created. This officer applied principles which were common to all nations. These principles became known as the *Jus Gentium*. Jus Gentium It was "that part of the private law of Rome which was essentially in accordance with the private law of other nations." The Stoic philosophers connected the general principles of *Jus Gentium* with the Law of Nature and thus imported to the former a new dignity. The Roman law received also an immense theoretical development from the private jurists. Under the empire the juris consults prepared the imperial edicts and decisions. Lastly, the Roman laws were codified by Theodosius in the 4th century A. D. and by Justinian in the 6th century A. D. The great gift of these codes was the Private Law which made "wide and scientific provision for the establishment, recognition, and enforcement of individual rights and contract duties."

The Teutonic tribes, the Goths, Franks, Lombards etc., invaded the western Roman empire in the fifth century A. D. They had no unified law like that of Rome; each tribe had its own law. The principle which obtained among the Teutonic tribes was that each man must be judged and given his right by his own native law, according to the custom of his own people. Every person was judged by his 'personal law.' In pursuance of this principle the invaders allowed the Roman citizens to continue under their own law. Personal Law The result was that in one territory and under one ruler several systems of law continued to be observed.

The advent of feudalism changed the 'personal law' into 'territorial law.' Over the domains of each lord a particular system of law came to prevail. In the middle ages the Teutonic customs were greatly influenced by the Roman law. Several causes contributed to the diffusion of the Roman law in Western Europe. Territorial Law

The Roman law began to be systematically studied by competent scholars in the twelfth century. Schools of law sprang up in Italy and drew to them students from all parts of Europe. These students, being trained, returned to their homes with a strong bias for Roman law. The Catholic Church took over from the Roman law conceptions of free contract, individual ownership and succession by will. The Church organised a set of her own courts in which these principles were recognised and her priests, as counsellors, of kings and compilers of codes, introduced these in the feudal society. Thirdly, the Teutonic kings prepared their own codes in the light of Roman law. The rules of Roman law were more

Causes of the diffusion of Roman law

and more consciously and skilfully fitted into the growing law of the kingdoms, which were emerging from the feudal systems. The rulers accepted as much of the Roman principles as possible, because these were conducive to the growth of despotism. The method by which Roman law was introduced

Amalgamation of Roman and Teutonic laws

was not by legislation, but by the decision of cases in the royal courts. Except in England, Roman and Teutonic laws were amalgamated. Roman law exerted a direct influence on Code Napoleon (1804). Through French influence it was spread in Holland, Italy, Spain and many German states.

In England the native law kept the Roman law out. England is separated from the continent by the English Channel and she led more or less an isolated life.

Why did Roman Law fail to enter England?

Moreover, under the strong and unifying rule of the Norman and Plantagenet kings English judges were able to put together a consistent system of English law. So England did not feel any need of a foreign jurisprudence. But it would be wrong to say that England has been altogether immune from the legal influence of Rome. Her borrowings from Roman law have been of form and method rather than of substance. In conclusion, it may be stated that Teutonic principles predominated in public law; Roman principles in private law.

## VII. Law and Morality

Law and Ethics are closely connected, but at the same time they differ in their content, sanction and definiteness.

Law is concerned with the outward acts only

The province of Ethics is the whole life of man, his thoughts and motives as well as his actions. Law is concerned with the outward acts of man.

Even of these acts, only those which affect the welfare of men in society, are controlled by law. Falsehood, ingratitude, jealousy, meanness are all immoral, but they are not illegal, except when they lead to a breach of law and actual injury to others. A man may be a habitual liar but unless he breaks a contract he does not come within the jurisdiction of law. Thus the scope of Ethics is much wider than that of law.

Moral rules are enforced by individual conscience and by the disapproval of public opinion. But Law is enforced by the state.

Law is a matter of force

Thus we see that law is a matter of force, its breaches being punished by the power of the state; but morality can not be forced. There are, of course, some classes of actions which, while possible

of legal enforcement, are better left to the individual conscience. If these are enforced by law, man's feeling of moral obligation would be lessened. Moreover, law regulates outward conduct only so far as workable and uniform rules can be found for its regulation.

In spite of the differences noted above, Law and Morality are inherently connected. Both arose from the habit and experience in the primitive social life, when no distinction was made between the two. Even after the differentiation between law and morality, many points of contact remain. Both Political Science and Ethics deal with man as a moral agent in society. "Ethics," says Sidgwick, "is connected with politics so far as well-being of any individual man is bound up with the well-being of his society." Law tries to conform to wide-spread moral ideas of a community. Child marriage was prevalent in India; now the enlightened morality of the educated classes find that it is morally wrong; so they made agitation for its abolition. The result is the Sarda Act. But if laws move far in advance of the moral standards of the people for whom they are meant, they would not be observed. Drinking was considered by a minority of Americans to be wrong, so they secured the passing of a law, prohibiting the selling of wine in the United States of America. As the majority of Americans did not accept this view, selling of wine could not be prevented there. Conversely, a body of law is becoming constantly inapplicable owing to the change in moral ideas. Observance of the Sabbath day is recognised by law in most of the Christian countries, but it is not generally observed and the non-observance is not punished by law. "Only such law as has the support of moral sentiment will be respected and obeyed, or, if necessary, efficiently enforced."

Points of  
contact  
between  
Law and  
Ethics

### VIII. Is the Law above the State ?

Jurists of the positivist school and writers like Duguit, Krabbe and Laski hold varying theories of the relations of the state to law. The former regard state-enforcement as the distinctive feature of law. According to them the state is the only source of law and hence law can never be above the state. The state possesses the monopoly of coercion and only those rules deserve the name of law which have political coercion behind them. But Duguit contends that the state as such has no essential connection with law because the state is merely a body of men inhabiting a definite territory, in which the strong impose their will on the weak. The sanctions for political commands are simply the physical

Is law  
independent  
of state ?

penalties the rulers are in a position to apply to those who dare to disobey. On the other hand, laws are those rules of conduct which normal men know that they must observe in order to preserve and promote the benefits derived from life in society. The sanction for law is not coercion but psychological awareness among normal men that they must observe certain rules of conduct in order to preserve and promote the benefits derived from life in society. Law is much more comprehensive than the state and if the state violates any of the rules of social solidarity, it acts unlawfully.

But there is no unanimity in any community regarding the standards of right. If every individual is to be guided simply by his own sense of right, there can not exist any community at all. Krabbe tries to solve this difficulty by stating that the legal obligation is dependent on the majority's sense of right. "If," he writes, "the members of a community differ regarding the rules to be followed, those rules which are desired as rules of law by a majority possess a higher value—assuming a qualitative equality of members in their sense of right." The statutes enacted by popularly elected legislative bodies reflect this sense of right. Judicial tribunals modify the written laws in accordance with the majority's sense of right. If a legislature does not really represent the people or if it misinterprets what the people's sense of rights demands, revolution or the modification of statutory by unwritten law will bring law in conformity with the majority's sense of right.

Laski also holds that the law is above the state. In certain critical moments of history, people have defied the existing political authority and raised the standard of revolution in pursuance of ends higher than peace and order. Those who resisted Charles I in 1642, Louis XVI in 1789, or Nicholas II in 1917, were, according to Laski, defiant of the state but faithful to the law above the state. He contends that the essence of the law-making process is the consent of interested minds and the source of law is in the individual consenting mind.

"Law is not merely a command," he writes, "it is also an appeal. It is a search for the embodiment of my experience in the rule it imposes. The best way, therefore, to make the search creative is to consult me who can alone fully report what my experience is. There can be no guarantee that law will be accepted save in the degree that this is done. Legal right is so made as the individual recipient of a command invests it with right; he gives it his sanction by relating it successfully to his own experience. When that relation cannot be made, the authority of law is always

in doubt." The state, accordingly, is entitled to obedience only to that extent as it represents adequately the interests of the individuals, territorial groups, and functional associations affected by its laws.

These varying theories regarding the relations of the state to law are due to the variety of meanings attached to the term law. Those who hold that laws are rules backed by the comprehensive and compulsive social institution called the state, naturally deny the superiority of law over the state. On the other hand, those who apply the term law to those rules which have at their back a sense of right of the community, or of the majority of right-minded persons in the community, or of the individual, deny that the state is above law.

Difference  
due to the  
meaning of  
the term,  
law

## IX. International Law

"International law is the body of rules which civilised states observe in their dealings with each other, these rules being enforced by each particular state according to its own moral standard or convenience." These rules are concerned with the conduct of war, diplomatic intercourse in times of peace, the rights of citizens of one country living under the dominion of another, the rights and duties of neutral powers in times of war, etc.

What is  
international  
Law

The rules of International law have not grown in a day. The Amphictyonic Council sought to maintain peace among the city-states of Greece. In republican Rome the rules that guided the relations between states were known as *jus feciale*. The Holy Roman Empire and the Papacy in the middle ages tried to maintain a shadowy peace in Europe. After the reformation the Pope's claim to world-power was lost. Then various writers began to devise plans for maintaining peace.

Its origin

A Parisian named Emerich Cruce (1590-1648) formed a plan for an international council to determine disputes between the nations in his book entitled, "New Cyneas." The great French minister Sully prepared a similar scheme. Then came Hugo Grotius, who being appalled by the savagery of the Thirty Years' War set himself to think out the principles upon which laws might be based for mitigating the horrors of war. His book "Laws of War and Peace" laid the real foundation of modern international law. He emphasised upon the sovereignty and equal status of all states. International law was further developed by the decisions of eminent judges and the agreement of various international conventions like the Treaty of Paris (1856), Berlin Conference

Contribution  
of Hugo  
Grotius

International  
conferences

(1884), Hague Conventions. The Covenant of the League of Nations has supplied a compact body of rules for guiding the conduct of states in war, peace and neutrality.

The sources from which the rules of international law have been derived may be classified under six heads—(i) Roman law ;  
 Six sources (ii) scientific treatises ; (iii) Treaties and conventions ;  
 (iv) International conferences and arbitration tribunals ;  
 (v) the municipal law of states and (vi) diplomatic correspondence.

The Roman idea of *Jus Gentium* provided a positive basis of a system of law common to all nations and emphasised the idea of moral obligations as equally binding on all states.

The writings of great jurists like Hugo Grotius, Pufendorf, Leibnitz, Wolf and Vattel have reduced to a logical system the rules adopted by states in their external dealings.  
 Writings of Publicists Among modern writers of International Law the names of Woolsey, Lawrence, Hall, Oppenheim and Garner may be mentioned. Statesmen refer to opinions of these writers as authoritative.

International law derives its binding force from the consent of states. So the treaties and conventions agreed upon by a large number of states form an important source of International Law.

The decisions of international conferences and arbitration tribunals are generally accepted by the nations concerned. These now form a valuable part of International Law. In recent times the Hague conferences and Washington and Lausanne conferences have contributed valuable principles to International Law.

\* Laws which are formulated and enforced by the authorities within a particular state are known as the municipal law of the state. In each state there exist laws relating to questions of citizenship and naturalisation, neutrality tariff, extradition, army and navy regulations etc. These laws affect the interests of other states also. The decisions of admiralty courts in cases of capture of ships etc., are based mostly on International law. These decisions are sometimes taken as authoritative in International law. Some parts of the diplomatic correspondence in the Foreign offices of states are published. These give a basis for future international action.

According to the Austinian conception of Law, International Law can not be recognised as Law. To Austin, Law is that body of rules for human conduct, which is set and enforced by a definite sovereign political authority. As international law is created among sovereignties, there can be  
 There is no sanction behind International Law

no superior power for enforcing it. If a superior power is established, sovereignty of the state would be destroyed and international law would be transformed into the municipal law of a world state. At present there is no force, no sanction behind international law ; each state ultimately decides for itself whether to obey it or not in a particular case. Had it been as binding as the municipal law, Japan would not have dared to establish her authority over Manchukuo nor to attack China without declaring war in August 1937. From this point of view, International Law may be called "a sort of international public opinion or customary observance, imperfectly enforced in an imperfectly organised world state."

Sir Frederick Pollock observes "International Law is a body of customs and observances in an imperfectly organised society which have not fully acquired the character of law, but which are on the way to become law." Many modern jurists, <sup>Common will</sup> however, think that International Law has already acquired the character of law. Their contention is that the real sanction behind the municipal law is not force, but the common will underlying the legal principles. They hold that similar common will among peoples is the real sanction behind international law. But it may be pointed out that such a common will has not grown up amongst nations.

Then again, the modern jurists point out that the Covenant of the League of Nations provides a code and an organization to enforce it. "The doctrines of International Law," says Hall, "have been elaborated by a course of legal <sup>Nature of International Law</sup> reasoning ; in international controversies precedents are used in a strictly legal manner ; the opinions of writers are quoted and relied upon for the same purposes as those for municipal law ; the conduct of states is attacked, defended and judged within the range of international law by reference to legal consideration alone ; and finally it is recognised that there is an international morality distinct from law, violation of which gives no formal ground of complaint, however odious the action of the ill-doer may be."



## CHAPTER V

### LIBERTY AND PUBLIC OPINION

#### I. Various Meanings of the Term Liberty

Liberty seems to be such a simple and evidently desirable thing that very few people would care to define it correctly. But like many other terms of Political Science, it has been used rather vaguely to connote a variety of ideas.

It is often used in the sense of national independence. When we say that the thirteen American colonies won liberty from England or the Greeks from Turkey we mean that the Americans and the Greeks secured national independence. The term 'national liberty' may be conveniently used to designate this kind of freedom, which involves the question of sovereignty in its external aspect.

Sometimes liberty denotes the rights of the people to choose their representatives and control through them the executive of the state. In this sense the question of liberty is dependent on the location of sovereignty and the organisation of government in each state. It means participation of the citizen in the government of the community. This kind of liberty is called political liberty.

In the eighteenth century, the term 'natural liberty' was in great vogue. Rousseau spoke of natural liberty as "an unlimited right to anything that tempts him and which he can obtain." But good things tempt everyone, and if everyone tries to obtain the same thing conflicts would be inevitable, and the strongest alone can enjoy it. In practice, then, 'natural liberty' would mean the liberty of one, only the mightiest, nay, the omnipotent,—to enjoy what tempts him. Liberty of this unrestricted character is an impossibility for every individual at the same time.

The framers of the French Declaration of the Rights of Man realised this and so they declared, "Liberty consists in the power to do everything that does not injure another." This conception of liberty is called Civil Liberty or the liberty which one can enjoy in society.

#### II. History of the Concept of Liberty

From one aspect the history of mankind is the history of struggle for liberty. The first struggle for liberty was against

arbitrary power and unjust laws. Under the Greek and Roman oligarchies power was vested in the hands of the few, who alone were the depositories and administrators of law. The oligarchies were overthrown by Tyrants, who had at first stood up as the champions of the people. The Tyrant, in turn, had to give way before the general body of citizens. To the Greek and Roman citizens liberty meant equal laws for all or recognition of civil rights, securing exemption from the exercise of arbitrary power. In England, similarly, we find the Barons and Prelates struggling for 'liberties' against a tyrannical king from whom they wrested away the 'Magna Carta'. In the seventeenth century Parliament struggled against the Stuart kings for the recognition of civil rights. It was further recognised that to secure civil liberty, political liberty is necessary, because civil rights are insecure without political rights. A despotic government may take away the civil rights of the citizens. Thenceforth and for two centuries, the conception of liberty, covered not only private civil rights, but public and political rights also; and especially the right of electing the representative through whom the people were to exercise their power. When by the middle of the 19th century, liberty in the sense of self-government was secured in most of the western countries it was found that liberty of another kind was necessary. Representative government means rule of the Majority, but a Majority is not the same thing as the whole people. Hence arose the conception of Individual liberty—an exemption from control in matters which do not so plainly affect the welfare of the whole community as to render control necessary.

Meaning of Liberty in the ancient world

Need of Individual Liberty under majority rule

### III. Content of Civil Liberty

Liberty implies the absence of restraint upon the existence of those social conditions, which are necessary for the development of personality of each individual. It signifies that an individual can choose his or her way of life without any prohibition imposed from outside. But man can develop his personality only by living in society. A person sedulously isolating himself from others can not find any scope for showing love, affection, friendship, fellow-feeling and compassion. But if a person has to live in society, especially in a complex society of the present day, certain rules and compulsions must be maintained to prevent clashes between the diversity of desires of the large number of members of the community. These rules and compulsions act as limitations on liberty no doubt; but it is highly important to maintain a

Implication of liberty

balance between the liberty we need and the authority that is essential. In defining the sphere of authority sufficient room must be left for the average man for the continuous expression of his personality.

There are three kinds of liberty—liberty of thought, liberty of speech and liberty of action. Of these three, liberty of speech, including liberty of reading, writing and discussion, is the most essential factor for the development of personality. If liberty of speech is safeguarded, liberty of thought would be ensured almost automatically. Again, if complete freedom of speech, reading, writing and discussion were granted, government would gain little by restricting freedom of action. In the middle ages the Catholic Church tried to punish those who held heretical opinion. The institution of the Inquisition pried into the inmost thoughts of man. But thought, by its very nature, defies compulsion. Freedom of thought, however, becomes valuable only when it is associated with the liberty of expression.

Freedom of speech and discussion are of utmost importance not only for good government, but also for the progress of arts and sciences. The business of those who exercise authority in the state is to satisfy the wants of the people. But they can not be truly informed about these wants unless the mass of men are free to express their opinion. Nothing is more important in keeping the executive government within the strict limit of law than freedom of speech and discussion. Where such freedom exists, the executive authority is restrained from hasty and oppressive acts by the fear of provoking adverse criticism. If law is to be the mirror of public opinion, it must take account of the totality of experience and this is possible only when the experience of all persons is unfettered in its opportunity of expression. Nothing has been more common in the past than the punishment of heresies and unorthodox opinions. But it has been rightly observed that the heresies we may suppress today are the orthodoxies of to-morrow. "The world gains nothing", observes Laski, "from a refusal to entertain the possibility that a new idea may be true. Nor can we pick and choose among our suppressions with any prospect of success. It would, indeed, be hardly beyond the mark to affirm that a list of the opinions condemned as wrong or dangerous would be a list of the commonplaces of our time."

Free discussion has ever been the parent of intellectual advancement. Without the right of criticising freely, there could not have been any scientific discovery and literary and artistic improvements. Freedom of

Three kinds  
of liberty

Freedom of  
speech and  
discussion

its cultural  
value

discussion and speech "fosters a general intellectual tone, a diffused disposition to weigh evidence, a caution before hasty action, and a conviction which was wanted in the more fanatic world" Bernard Shaw in the Preface to his play, 'On the Rocks', writes that it is the duty of liberty-loving people to secure "impunity not only for propositions which, however novel, seem interesting, statesmanlike, and respectable, but for propositions that shock the uncritical as obscene, seditious, blasphemous, heretical and revolutionary "

An important form of freedom of speech and discussion is the freedom of Press Raja Rammohun Roy in his memorable Petition against the Press Regulation to the King in Council wrote : "Men in power hostile to the Liberty of the Press, which is a disagreeable check upon their conduct, when unable to discover any real evil arising from its existence, have attempted to make the world imagine, that it might, in some possible contingency, afford the means of combination against the Government, but not to mention that extra-ordinary emergencies would warrant measures which in ordinary times are totally unjustifiable, Your Majesty is well aware, that a Free Press has never yet caused a revolution in any part of the world, because, while men can easily represent the grievances arising from the conduct of the local authorities to the supreme Government, and thus get them redressed, the grounds of discontent that excite revolution are removed; whereas, where no freedom of the Press existed, and grievances consequently remained unrepresented and unredressed, innumerable revolutions have taken place in all parts of the globe, or if prevented by the armed force of the Government, the people continued ready for insurrection."

Freedom of  
Press

Liberty in  
action

Liberty in action consists of liberty of movement and settlement within the state, liberty of migration and the right to the protection of the state, freedom of forming association, and freedom of contract Of these the freedom of association is most important. In the modern world the right of the state to control the freedom of association in the industrial sphere has become a question of vital importance. The upholders of state authority argue that the trade unions should confine themselves to strictly industrial matters and must not be allowed to meddle in political affairs. It is also contended that the state can legitimately prohibit strikes by those whom it directly employs, for example, post-men, and those who are employed in industries like Railway and Electric Supply, which are of vital importance to the community The declaration of general strikes, too, is prohibited also on the ground that it is an

attempt to coerce the government. But these restrictions take away the most essential feature of the freedom of association by workers. The workers are individually much weaker than their employers. It is only by going on strike that they can hope to secure redress of their grievances. "To limit the right to strike," observes Laski, "is a form of industrial servitude. It means, ultimately, that the worker must labour on the employer's terms lest the public be inconvenienced. I can see no justice in such a denial of freedom." In the political sphere, freedom of association, means the right of forming a party for promoting any programme which the members may subscribe. But this right is denied in most of the modern states to-day.

Liberty in choosing the vocation is rightly considered an important factor in the development of personality of an individual. The society in which the status of a person is determined by birth or the economic position of his parents, does not allow free scope for the improvement of latent faculties of man. Equality of opportunity and economic security are necessary for giving effect to individual liberty.

Liberty in  
choosing  
vocation

#### IV. The Positive use of Liberty

Liberty seems meaningless without the removal of the causes contributing to the economic privation of the masses. Wealth is concentrated in every country except Russia in the hands of a few persons. These persons own and control the instruments of production. They hire the services of workers in producing goods which they sell at a profit. The unequal distribution of wealth produces grave social consequences. The young children of the working class can not get as good education as the children of the holders of property rights get. Consequently the earning capacity of the latter becomes much greater than that of the former and this perpetuates the inequality between the different classes. On account of the unequal distribution of wealth the productive resources of the community are employed to satisfy the less urgent needs of the richer class to the neglect of the production of goods and services which satisfy the more urgent needs of the poor. All true lovers of liberty believe to-day that men and women are truly free only when their bodies are free from want and their minds from external control. Freedom of speech, of writing and of association should, therefore, be used not in a negative fashion but in a positive way to secure a rational system of distribution and a rational system of education with protection against

Unequal  
distribution  
is hostile to  
liberty

the insidious propaganda of the interested parties. The modification of the economic system can be brought about by peaceful means if the general body of citizens use their liberty with courage, determination and rationality.

## V. Limits of Liberty

The state exists to promote certain ends—the development of personality, the right of every individual to conceive the good life according to his light and culture and the right to pursue it as he conceives it. Liberty is absolutely essential for the realization of these ends. But man can realize these ends only by living in an organized society or the state. In the society there are men of diverse character, inclination and aptitude. The majority of individuals are honest and law-abiding ; but a few have got anti-social tendencies. If the function of the state is to make possible the pursuit of the good life for its members, certain uniformity of conduct has got to be maintained. If it is decided that all traffic should go to the left of the road, no one should be allowed to imperil the lives of his fellow citizens by insisting that unless he goes to the right the free development of his personality will be inhibited. The anti-social tendencies of a few abnormal persons have to be checked and curbed for the welfare of all. But force of society is to be applied only when there is some overt act on the part of any citizen. Mere expression of an opinion or criticism of the government should not be punished.

Limitation  
for main-  
taining cer-  
tain unifor-  
mity of  
conduct

Mill in his famous 'Essay on Liberty' declared that 'the sole end for which mankind are warranted, individually or collectively, in interfering with the liberty of action of any of their number is self-protection'. The state stands for promoting the interests of all. If it is found that a person or group of persons are pursuing a course of action which is detrimental to the interest of many, the state should interfere with the liberty of action of those persons of anti-social tendency. In the sphere of conduct the state should maintain a minimum of decent behaviour on the part of all in order to prevent the few from preying on the many. In the sphere of economics it must check the blind results upon the many of the economic actions which are voluntarily undertaken for gain by the few. Social control of economic forces has become necessary in the twentieth century. The freedom of contract or of association has to be restrained when such freedom interferes with the economic security and protection of the majority of people.

For self-  
protection

An individual can have no right against the state. But it is of utmost importance to draw a line of distinction between the state as a whole and the persons who exercise the authority of the state. If a particular class of men exercise that authority for the sake of promoting their own selfish interest, citizens should take courage in both hands and fight for their liberty against them. But in an ideal state, representing the interest of all, no right which is harmful to the state can be claimed. The individual enjoys freedom of person, but in times of emergency, such as war or threatened revolution, suspected persons may be kept under restraint. Right to life is of paramount importance, but the state can inflict capital punishment on a dangerous criminal or may command an ordinary citizen to join the army in time of war. Similarly, the right of enjoyment of property is guaranteed to the individual, but property may be confiscated either as a punishment or for reasons of state. The citizen may make contract or form association, but if these are made for illegal or immoral purposes or for endangering the safety of the state, these will be made invalid by the state.

## VI. Liberty in the Modern State

Liberty has declined in some states and disappeared from others. In Germany, in Italy, in Russia, in France, in Yugoslavia, in Greece, in Rumania, in Japan prisons are full of those who have committed no crime except that of holding views on political questions other than those which commend themselves to the political authorities in their state. The Dictatorships which have arisen in these states have arrogated to themselves a power over men's minds unprecedented in history. The tyranny they exercise is far more oppressive than the rule of any Czar, Sultan or Emperor. The Dictators dismiss freedom of thought as useless; they prohibit freedom of association and impose severe restrictions upon freedom of movement. The cause of liberty has been eclipsed even in a country like England. "There have been more prosecutions", says Joad, "in England for the expression of opinions disliked by the Government during the fifteen years that have elapsed since the war than in the half century before 1914."

Various circumstances have conspired to bring about the decline of liberty everywhere in the world. The development of science is making the world increasingly a single economic unit. As a result of this the effect of economic actions anywhere in the world is producing unforeseen results upon people unknown to those who

have taken an action. The blindness of economic action and the growing size and complexity of the modern state frustrate the political consciousness of the individual. He no longer feels that his opinions, desires and purposes are of any importance. As he finds himself politically negligible, he becomes either apathetic and indifferent to politics or works for a revolution with the purpose of changing the system which has squeezed him out. Neither sort of frame of mind is conducive to the maintenance of liberty.

The complexity of administrative organization in one hand, and the shrinkage of distance brought about by the wireless, the telephone and the aeroplane on the other, have rendered the devolution of governmental functions wasteful and unnecessary. Centralization of governmental authority has become the order of the day. Centralized government takes away the incentive of citizens to serve upon the local bodies. It becomes impatient of local differences. Under such a system the citizen is forgotten in the statistical unit, and scant attention is paid to the development of his personality.

Growth of centralization

Moreover, during the last twenty years crises after crises have arisen in the different states of Europe. In a period of crisis unity of purpose and unity of command become necessary. As criticism impairs unity and sows distrust, the voice of opposition to government is suppressed. In such an atmosphere liberty finds it extremely difficult to flourish.

Atmosphere of crisis

Cheap newspapers, the cinema, the radio and the gramophone have made it possible to dominate the minds of the people from outside. These appliances are used by Governments to instill positive opinions into the minds of their citizens. The citizens cease to think for themselves. The grave consequences of this phenomenon are forcibly stated by Dr. Inge in the following words: "A completely mechanized society would be a servile state in which all spiritual and intellectual life would be strangled. The consummation of this type of polity may be studied in the bee-hive or the ants' nest."

The generation of mass mind

## VII. Guarantee of Civil Liberty

Civil liberty has got a negative and a positive aspect. In its negative aspect, Civil liberty consists of "exemption in a certain sphere against encroachment on the part of the government, except in the legal method and to the legal extent prescribed by the state." In its positive aspect, "it consists of rights to exercise certain

Two aspects of Civil liberty



prerogatives, and to call upon the government to maintain these rights against any other individual or association of individuals" Public law guarantees immunity against government ; private law against other individuals.

Democratic government is essential for the continuance of liberty. Democracy is the only form of government in which, men are given a chance of making the government under which they live As the democratic government rests on popular consent, it can afford to admit that it is not infallible and to welcome criticism A dictator, on the other hand, not having the assurance of consent, cannot permit these liberties. Thus a dictatorship is forced by the very logic of its origin and existence to suppress the freedom of the citizens

Democracy  
essential to  
liberty

Under democratic form of government liberty is guaranteed to the citizens by adopting two devices—the declaration of rights and the separation of the judicial from the executive power. All the post-war constitutions contained declarations of fundamental rights in imitation of similar declarations in the constitution of the U. S. A. and France. The Weimer Constitution of the German Republic guaranteed freedom of speech and discussion, but at the same time provided that exceptions to this rule might be made by the authority of the legislature in times of emergency Other constitutions also usually guaranteed civil and political rights such as the right to assemble, to form associations, the freedom of the Press, the inviolability of residence and freedom of movement within the state. In spite of the declaration of rights citizens of these states have lost all vestiges of their liberty. This shows that the fundamental rights, declared by a constitution can not adequately guarantee liberty, unless provisions are made in the judicial system to give redress in case of infringement of liberty by the government.

Declaration  
of rights of  
man

In England people attach more importance to the question of providing legal remedies for the enforcement of particular rights and for averting specific wrongs than to the question of declarations of the rights of man. The Habeas Corpus Acts of England have invested the judiciary with the power of curbing executive excesses and of supervising and controlling administrative measures designed to attack the personal liberty of Englishmen. Under normal circumstances any invasion on the liberty of the individual entails either imprisonment or fine upon the wrong-doer. But in India the writ of Habeas Corpus is not available to persons arrested and detained in execution of legal process. The law of Habeas Corpus is not also applicable in Bengal to persons arrested or detained under

The Habeas  
Corpus Act  
in England  
and India

the Bengal Criminal Law Act of 1932 as amended up to 1934 and to those who are restrained under the Bengal Suppression of Terrorist Outrages Act of 1932 as amended up to 1934 and the rules made thereunder.

In the English Constitution there is no declaration of fundamental rights of citizens. But the Magna Carta, the Petition of Right, the Bill of Rights, the Act of Settlement and the Habeas Corpus Act make adequate provisions for safeguarding individual liberty. According to the Rule of Law prevalent in England, there is no right which a citizen possesses which he can not maintain in the courts of Law. Wherever there is a right, there is a means of obtaining redress for its infringement. In England and the U. S. A. the individual is protected from the executive encroachment by the judiciary which is independent of the executive in both the countries. But in recent years certain branches of the executive have been empowered to make regulations and try cases arising out of the infringement or non-fulfilment of such regulations. The civil service division of Industrial Court, the Commissioners of Income tax, the Home Secretary considering requests from aliens for naturalization are instances of the exercise of judicial power by the executive.

The Rule of Law in England

In England no special constitutional provision exists for safeguarding freedom of speech and discussion. A legal authority has thus stated the English law.—“Our present law permits any one to say, write, and publish what he pleases, but if he makes a bad use of this liberty he must be punished. If he unjustly attacks an individual, the person defamed may sue for damages; if on the other hand, the words be written or printed, or if treason or immorality be thereby inculcated, the offender can be tried for the misdemeanour, either by information or indictment.” If any person attacks another or the government unfairly, he may be convicted under the law of libel.

Freedom of speech in England

## VIII. Relation of Civil Liberty to Law and Sovereignty

“Individual liberty”, says Bryce, “is like oxygen in the air, a life-giving spirit. Political liberty will have seen one of the fairest fruits wither on the bough if that spirit decline.” But individual liberty does not mean the unrestricted right of doing anything a person likes to do. The exercise of such a right would mean the negation of rights of others. Civil liberty should mean, therefore, the utmost freedom of action that each and every individual can enjoy upon like terms at the same time, but he is to be com-

Need of the sovereign authority of the state to maintain Civil Liberty

pletely unrestrained in his actions in so far as they do not interfere with the like freedom of his fellows. To secure freedom from interference of others an organisation and an authority are needed. That organisation is the state and that authority is that of the sovereign. It is the state which guarantees the immunity from interference of others to its citizens. The guarantee is given by the fundamental laws of the state, which thus brings into legal existence the rights of the citizens. The sovereign or the absolute power in the state maintains these rights. Had there been no power which is supreme over the will of any individual or association of individuals, there could not have been any guarantee of immunity from interference of others for each and every individual. Thus the apparently contradictory ideas of sovereignty and individual liberty are found, on closer examination, to be correlative terms. Liberty of the individual is dependent on the existence of a sovereign power.

'Natural right' as equal to the right in a state of nature which is not a state of society is a contradiction in terms. There can be no right without a consciousness of common interest on the part of the members of the society. Without a society and consciousness of common interest, there can be only "powers", no "rights".

"Sovereignty alone is despotism and destroys liberty", says Gettel, "while liberty alone is anarchy and destroys sovereignty." So every democratic state has made a compromise by guaranteeing certain rights to the individual. But as the guarantee can be given and maintained by the state alone, there can be no rights against the state. The individual, however, can and should have rights against the Government, which is but the agent of the state.

## IX. Public Opinion

It has been well said that "the price of liberty is eternal vigilance." This vigilance is to be exercised by the general body of citizens. But the majority of citizens of every nation are so much engrossed in their own private affairs that they can not pay adequate attention to public affairs. Without such an attention, however, the scope of civil liberty is sure to be curtailed by the Government. Government is kept steady by public opinion. Public opinion has no legal claim to obedience but no sensible man dares to dispute its claim to careful consideration.

Now let us see what public opinion means, how it grows and how it remedies the defects of election and the exercise of franchise. Lord Bryce has thus defined the nature of Public

There can be no right without a state

Importance of Public Opinion

opinion—"The term is commonly used to denote the aggregate of the views men hold regarding matters that affect or interest the community. Thus understood, it is a congeries of all sorts of discrepant notions, beliefs, fancies, prejudices and aspirations. It is confused, incoherent, amorphous, varying from day to day and week to week. But in the midst of this diversity and confusion every question as it rises into importance is subjected to a process of consolidation and clarification until there emerge and take definite shape certain views, or sets of interconnected views, each held and advocated in common by bodies of citizens. It is to the power exercised by any such view, or set of views, when held by an apparent majority of citizens, that we refer when we talk of public opinion as approving or disapproving a certain doctrine or proposal, and thereby becoming a guiding or ruling power." The opinion of the whole body of citizens may be called Public opinion, but the whole body of citizens are seldom unanimous on any matter. Public opinion, therefore, should mean that opinion which is held by a very large section of the people and which has for its object the welfare of the whole of society. The opinion held by a majority, is not necessarily public opinion, because the majority might form an opinion without equal regard or reference to the interests and welfare of minorities.

What is  
public  
opinion?

Public opinion regarding a particular question can not be properly ascertained from newspapers, because newspapers are generally organs of a particular party. sect or community. Public meetings also fail to impart a correct impression about public opinion; in as much as they are convened and attended by men holding a particular view. Elections too fail to express adequately, the purposes of the people. The majority of voters are ignorant, indifferent or amenable to extraneous influence. Moreover, election largely turns on the personal merits of the candidates and not on the doctrines they profess. In elections opinions are counted and not weighed. The wisest and the most foolish are put on the same level. Hence, it is a very imperfect mode of expressing public opinion. According to Bryce, public opinion can be ascertained "by moving freely about among all sorts and conditions of men and noting how they are affected by the news or the arguments brought from day to day to their knowledge."

How public  
opinion is to  
be ascer-  
tained

Political thinkers, journalists, legislators and people actively engaged in politics give sufficient attention to what passes in the political world. They ascertain the facts, correlate

them and set forth the arguments for or against a particular question. A second class of people, who form a considerable proportion of citizens read and listen to these arguments. These people correct and modify the views of the first class. They really give shape to public opinion. The vast majority of unthinking mass only swell the volume of public opinion.

Three  
classes  
of people  
forming  
public  
opinion

## CHAPTER VI

### CITIZENSHIP AND NATIONALITY

#### I. Subjects, Citizens and Electors

The most fundamental element in the state is the population. Without population there can be no state. The term population denotes all persons living within the state irrespective of their legal and political status. It is quite conceivable that a state would consist of persons held in subjection to others, of persons enjoying fully civil and political rights as well as foreigners residing within the territorial limit of the state.

Different  
classes of  
Population  
of a state

In the city states of ancient Greece the slaves outnumbered the free persons. Hence Aristotle defined a citizen as one who has a share in the government of the state and is entitled to enjoy its honours. The slaves and aliens had no share in the government of the state. The right of participating in the government of the country was confined to a small minority in the population of even Athens, the most democratic of all the city states in Greece. In modern theory and practice rights of citizenship are not identified with political privilege. In every democratic state of the present age the majority of the population consists of citizens.

Citizens in  
ancient  
Greece and  
Rome

It is very difficult to define the term citizen. All we may say with certainty is that a citizen is not an alien. Citizens have been defined by Vattel as "the members of the civil society, bound to this society by certain duties, subject to its authority and equal participation in its advantages." The Supreme Court of the United States observed in a famous case that the citizens "are members of the political community to which they belong. They are the people who compose the state and who in their associated capacity have established or subjected themselves to the dominion of a government for the protection of their individual as well as their collective rights." Thus, of course, is more or less a description, and not a definition.

Citizens in  
a modern  
state

Hon'ble Mr. Srinivas Sastry offers a philosophical definition, laying stress on the relation of the individual to the state. He writes—"A citizen may be defined as one who is a member of a state and tries to fulfil and realise himself fully within it along with an intelligent appreciation of what should conduce to the highest moral welfare of the community."

The population of a modern state consists of citizens and aliens or foreigners. The aliens may be living in the state temporarily or permanently. The chief point of distinction between a citizen and an alien is that the former owes his allegiance to the state in which he resides, whereas the latter owes allegiance to another state.

Like the citizens, the aliens must obey the laws of the state in which they are residing; they must also pay taxes and rates. Like the citizens, again, they receive the protection of the state in which they are residing, but if the local authority fail to use reasonable diligence to protect them from attacks in a riot, insurrection or civil war, they may take recourse to diplomatic interposition through their own government. Some states, notably South Africa, impose restrictions on the rights of aliens to acquire property. But the tendency of modern legislation is to accord to aliens the same civil rights as those of citizens.

But so far as political or public rights are concerned an alien is not generally allowed to vote, or to hold office. It may seem then that the rights of aliens are like those of the citizens who do not enjoy franchise. But this is not true, because a citizen, whether he is enfranchised or not, can not be expelled from the state, whereas an alien may be expelled on the ground of political expediency. The citizens are, and the aliens are not, liable to conscription into the military service.

The privileges of citizenship may be divided into two well-marked classes, namely, (i) civil rights and (ii) political rights, meaning thereby the right to elect, to be elected and to hold office. The right of participating in the election of the members of the legislature or of the executive authority is not an essential mark of citizenship. In the United States of America there are citizens who are not electors, and in some of the component states there are electors who are not citizens. Prof. Garner opines that a frequent source of confusion would be removed if the term "citizen" were restricted to those only who enjoy full civil and political rights and a different term employed to describe all others. In France persons enjoying all the civil and political privileges are known as *citoyens* whereas those who owe allegiance and are entitled to protection irrespective of their civil or political status are designated as *nationaux*.

It has been suggested by some writers that the unenfranchised classes should be called subjects, while persons enjoying civil as well as political privileges should be known as citizens. This distinction, however, is arbitrary and unscientific. All persons, living within the state and owing allegiance

Citizens  
and  
aliens

Civil rights  
of aliens

Disabilities  
of aliens

Privileges of  
citizenship

Essential  
marks of  
citizenship

The term  
'subject' is  
not favoured

to the sovereign authority are legally speaking subjects. But the practice in the republican states like France, Germany and the U. S. A. is to call the subjects citizens. The term citizen, however, is unknown to English law, which designates all citizens as the subjects of His Majesty. It should be noted in this connection that the term "subject" having been associated historically with the theories of feudalism and absolutism is looked with disfavour by the writers belonging to republican states.

## II. Principles Governing the Acquisition of Citizenship

There are two general principles governing the acquisition of citizenship of a state. The older principle adopted by the ancient Greeks, Romans and Germans is known as the *Jus Sanguinis* according to which the nationality of the child follows that of the parents or one of them. In feudal times, however, when idea of territorial sovereignty emerged, the nationality of a person was determined by the principle of *Jus Soli* or *Jus Loci*, that is, by the place of birth irrespective of the citizenship of the parents. At present states like Austria, France and Italy follow the principle of *Jus Sanguinis*, and treat children born abroad of citizens as citizens and children born of alien parents within the territory of the state as aliens. In England the common law recognises the principle of *Jus Soli*. But a statute passed in the reign of Queen Anne provides that children born abroad of British subjects should be deemed to be natural-born subjects. Similarly, in the United States of America, there is a combination of the principles of *Jus Soli* and *Jus Sanguinis*. The Fourteenth Amendment of the Constitution, adopted in 1868, finally adopted the *Jus Soli* principle, and an act of the Congress of 1855 declares that all children born out of the jurisdiction of the United States of fathers who are citizens should be considered citizens of the United States. The citizenship law of 1907 requires from such children a declaration of intention of being citizen at the age of eighteen. Thus we see that owing to the combination of these two principles in the United States and in England children born abroad of citizens are treated as citizens and at the same time children born within these states even of aliens are also regarded as citizens. Owing to the divergence of practice adopted by different states, conflict might easily arise with regard to the determination of nationality of a person. Suppose a child is born of French parents, touring in the United States of America. The child will be considered a French citizen because the French law follows the *Jus Sanguinis*, and at the same time he will be deemed a citizen of the U. S. A. because the latter state

Two principles of citizenship

Laws in England and U.S. A

Problem of double nationality



follows *Jus Soli*. Thus the person will have a double nationality. Such an anomalous position is avoided by two means. First, a state does not usually claim a person as citizen so long he remains outside its jurisdiction. Secondly, many states allow such persons residing within their limits the right to choose their nationality on attaining their majority.

As regards the comparative merits of these two principles it may be said that the *Jus Soli* is illogical but the place of birth is easily determinable. It is illogical in as much as it determines nationality by the mere accident of the place of birth and does not take into consideration the political allegiance and cultural affinity of the parents of the child. In this respect *Jus Sanguinis* is more logical. But there are practical difficulties in the way of proving the parentage of a person.

Merits of  
the two  
principles

### III. Modes of Acquiring Citizenship

Citizenship of a state may be acquired by one of the following ways, namely,—

(1) Birth within a place subject to the jurisdiction of the state including an embassy in a foreign country or through inheritance from a citizen father ;

(2) Direct grant or conferment of the state ;

(3) Indirect grant or recognition of citizenship through other modes, such as marriage, legitimation, adoption, the purchase of real estate, long residence in the country, entrance into the public service of a state and the political incorporation of a foreign territory.

Different  
ways of  
acquiring  
citizenship

The first of these processes, namely, the acquiring of citizenship by birth has been discussed in the previous section. Of the other modes of acquiring citizenship the most important is that by formal grant of the state.

#### Naturalization

The mode of conferring citizenship by formal grant of the state is generally called naturalization Prof. Garner observes,

Process of  
Naturaliza-  
tion

“Naturalization in the wider sense includes the bestowal of citizenship on an alien in any manner whatever, whether through legitimation, adoption, the naturalization of the children through the naturalization of the parent, the naturalization of a woman through marriage to a citizen, naturalization through the purchase of real estate, through service in the army or navy or the civil service, through the operation of the law of domicile, or through annexation of foreign territory, etc.” In its narrower sense, however, it refers to the granting of citizen-

ship by a court or an administrative officer on the fulfilment of certain prescribed conditions by the applicant. In the United States the power to naturalize belongs to certain judicial tribunals. In Austria, France, Hungary and Portugal the higher administrative authorities are empowered to naturalise aliens. In England the right to grant or withhold the certificate of naturalization is exercised by one of the principal secretaries of state

The conditions which must be fulfilled before acquiring citizenship differ from state to state. But generally the following conditions are insisted on —

(i) A period of residence within the jurisdiction of the State. In the United States, Hungary, Great Britain, Japan and the Netherlands, this period is five years. In Japan if the wife of the applicant is a Japanese woman this period is not required. In Austria and France residence for ten years is usually required before naturalization. Residence for two years only is needed in Argentina, San Domingo, Switzerland, and Mexico. (ii) the declaration of an intention to become citizen is required in almost all the states; (iii) taking of an oath of allegiance at the time of admission into citizenship; (iv) the applicant for naturalization must have "behaved as a person of good moral character"; (v) several states require security that the applicant and his family shall not become a public charge

Conditions  
of Natural-  
ization

An additional restriction is put in the U. S. A., where only "white persons" and "persons of African descent" are entitled to become naturalized. Indians can acquire citizenship only by special acts or by treaty. The Chinese, Japanese, Burmese and Hawaiians are excluded. In addition to these, alien enemies, polygamists, and disbelievers in, or opponents of, organised government, or advocates of the assassination of public officers or members of organization or bodies teaching such doctrines are also excluded.

Racial  
discrimina-  
tion

### Effect of Naturalization

The effect of naturalization practically is to invest the alien with all the rights of a natural-born citizen. The British Naturalization Act declares that a naturalized subject shall be entitled to all political and other rights and privileges and be subject to all the obligations to which a natural-born Englishman is subject except that when he is within the limits of the state of which he was formerly a subject he shall not be deemed a British subject unless he has ceased to be a subject of that state in pursuance of its laws or of a treaty stipulation. In the U. S. A. the naturalized citizens are not entitled to hold the offices of President and Vice-President

British  
Naturaliza-  
tion Act

In England a distinction is drawn between naturalization and denization, the former being granted by a Parliamentary act, the latter by a grant of the Crown. This distinction, however, has become practically obsolete. In Belgium and France a distinction is observed between "Grand" and "Ordinary" naturalization. The Grand Naturalization alone confers full political equality with a person of native birth.

### Other modes of acquiring citizenship

Citizenship may be acquired by legitimation by which an illegitimate child of a citizen father and alien mother is legitimized. In some states, as for example, in Mexico and Peru an alien automatically becomes a citizen by purchasing real estates. If a territory is conquered and annexed by a state, the citizenship of the conquering state is acquired by the inhabitants of the conquered territory. It was by annexation that the inhabitants of Florida, Louisiana, Texas, California, Alaska and Hawaii became citizens of the United States. The inhabitants of Porto Rico and the Philippines, the dependencies of the U. S. A., however, have not received the citizenship of the U. S. A. By marriage a woman generally loses her nationality and acquires the citizenship of the state to which her husband belongs.

### Domicile certificate in Indian Provinces

The granting of Provincial Autonomy by the Constitution of 1935 has intensified the jealousy between one province and another. Many Provincial Governments have framed strict rules for granting Domicile certificates to those who are not natives of a province. But the curious feature of these rules is that the children born and educated in a province are not regarded as Domiciled, if their parents hold any property in any other province. The Congress Working Committee have decided to treat as 'Domiciled' all those who have lived in a province for ten years consecutively and have been educated there. But up till now this policy has not been adopted in any province.

## IV. Citizenship in a Federal State and in the British Empire

The inhabitants of countries having a federal system of government are generally vested with a double citizenship. They are citizens of the federal state as well as of the component unit of the federation. The one citizenship is general or national, the other local. The problem which arises in this connection is which of them is primary and original and which one is derivative

Naturaliza-  
tion and  
Denization

Citizenship  
by legitima-  
tion,  
marriage,  
conquest  
and  
purchase of  
estate

Problem of  
citizenship  
in a federal  
state

Before the civil war in America, a school of writers held that citizenship of the United States was but the consequence of citizenship in some state. The result of the civil war, however, reversed this view. The Fourteenth Amendment of the Constitution made the citizenship of the United States primary and original, and that of the state secondary. In most cases state citizenship is obtained through the acquisition of federal citizenship. But there are cases where the United States government has not conferred the rights and privileges of national citizenship upon a class of state citizens. Conversely, there are citizens of the United States, such as those resident in the territories, dependencies, and federal districts, who are not citizens of any particular state within the federation.

Controversies in the U. S. A.

In Imperial Germany state citizenship was original and primary, while imperial citizenship was derivative and secondary. Imperial citizenship could be acquired only through the acquisition of the citizenship of a state. This conception and theory emphasised the particularist tendency of the German states. Hence under the present republican constitution of Germany the national citizenship has been made primary.

Germany

In the Swiss federation one must first of all be a citizen of a canton and then he automatically acquires the citizenship of the federation. The act of naturalization is performed by the government of the canton in which the applicant is domiciled, and in accordance with its own laws, though the authorisation of the Federal Council is required.

Switzerland

### Citizenship in the British Empire

There is no citizenship common to the British Commonwealth of nations. The Union of South Africa and the Irish Free State felt extreme repugnance to the term "British subjects" being applied to their respective citizens. They treat the subjects (citizens) of Great Britain as aliens. The Union of South Africa has passed many laws restricting the privileges of Indians to hold property or practise certain professions. The Dominions have developed strong sense of nationality and the Statute of Westminster, 1931 has recognized it.

Peculiar case of the Union of South Africa and the Irish Free State

## V. Loss of Citizenship

Citizenship may be lost in a variety of ways. The most common mode by which it is lost is by the voluntary withdrawal of the citizen from the country of his origin and his naturalization of the state of his adoption. It is the general tendency of all governments not to put any hindrance in the way of renouncing the citizenship of a state. At first England and the U. S. A. held the theory

Voluntary renunciation

that a citizen could not of his own accord throw off allegiance for another. But in 1868 the Congress of the U. S. A. passed an act which asserted that "any declaration, instruction, opinion, order, or decision.... which denies, restricts, or impairs the right of expatriation was incompatible with the fundamental principles of this government." In 1870 the British Parliament also allowed the citizens the freedom of naturalizing themselves in a foreign state.

According to the laws of many states acceptance of any post under a foreign government without the permission of the government to which the appointee owes allegiance, involves a forfeiture of citizenship. Citizens of Bolivia and Portugal lose their citizenship, if they accept a foreign decoration or title of honour. In some states, a person who deserts from the military or naval service is penalised by the loss of citizenship. In Latin America citizenship may be lost by judicial condemnation in certain cases. Absence for a long period, say, five or ten years, causes the forfeiture of citizenship in states like France, Germany and Hungary.

Other modes  
of giving up  
citizenship

The process by which a citizen who has been naturalized abroad may be readmitted to citizenship is called reversion of nationality, repatriation and reintegration. This may be effected in France and Belgium by returning home and making a formal declaration of intention to reside there, and by establishing a domicile. According to the British and American laws a citizen naturalized abroad may resume citizenship only by following the mode by which an alien is naturalized.

Reversion of  
nationality

## VI. The Status of Aliens

An alien in the political sense, is one who is a member of another state but in the legal sense he is fully subject to the jurisdiction of the state in which he is domiciled or in which he is temporarily sojourning. The aliens may be classified as those who are resident or domiciled, and those who are merely sojourning. Again they may be classed as belonging to the friendly state or to the alien state. The diplomatic representatives, however, hold a peculiar position. They are exempt from the jurisdiction of the state in which they are residing. According to International Law their place of residence is regarded as part of the state which they represent.

Classifica-  
tion of  
aliens

An alien enjoys the rights of protection equally with the citizens. He has the right to sue and be sued in the law courts. But some states make some discrimination against certain classes of aliens on account of their race, or creed or occupation. Thus the Nazi Germany treat the Jews harshly and unfairly. An alien is liable to

Discrimina-  
tion against  
aliens

pay all the taxes. But he is not liable to military conscription. Great Britain and most of the states in the United States of America permit the aliens to acquire and dispose of personal property in exactly the same term as enjoyed by a native-born subject. Certain disabilities are attached to the condition of aliens. Aliens can not enjoy political rights in any state. They are not eligible to any public office and are disqualified from exercising any national, municipal or other franchise. A state has the right to expel aliens who are considered undesirable in any way. But Hall observes that expulsion should be resorted to only in extreme cases and on sufficient grounds. These grounds should be placed before an international tribunal.

## VII. Rights and Duties of a Citizen

Right and Duty are correlative terms. One cannot exist without the other. Every right implies a corresponding duty. The correlative of a moral right is a moral duty and of a legal right is a legal duty. Like a legal right, a legal duty is always enforced by the state. Rights and duties are really the same facts looked at from opposite points of view. If, for example, Rama has the right of property in a house, others are under a duty not to interfere with the use of that house. Again, as the rights of Rama are respected by others, Rama should similarly abstain from interfering with the property belonging to others.

In considering the rights of a citizen, they may be classified under two main heads, viz., Ideal Rights and Legal Rights. Rights of a citizen

**Ideal Rights** are those rights which are said to belong to all men by nature. The idealists hold that they are necessary for the development of man as man and that every man should strive hard to arrive at them. They cannot be treated as legal rights unless they are recognised and guaranteed to citizens by the state. Whatever their theoretical value may be, they do not deserve much consideration in the study of Political Science and hence can be dismissed. Yet it can not be ignored that in the progressive states legal rights have to seek to approximate to the ideal rights.

**Legal Rights** are the creatures of law and are enforced by the power of the state. They are not inherent but are acquired rights,—rights created by the state. Legal rights are of two kinds—(i) Civil and (ii) Political.

Civil Rights are those rights which are enjoyed by the citi-

zens within the state. They are concerned, in the main, with the protection of life and property. Every citizen is entitled to the protection of the state for his person and property against foreign invasions, against riots, insurrections, assaults and robbery. The law secures him his family rights, freedom of marriage, sanctity of home, sanctity of private correspondence, freedom of thought and speech and freedom of religious belief and conscience. In some advanced communities the rights of receiving education and of being provided with a vocation are also recognised. The reason why such rights are guaranteed to individual citizens is to enable him or her to attain the best that he or she is capable of. But it should be remembered that rights are relative to circumstances. Thus for example the right of free speech should be restricted if it is found that in freely expressing himself a person is injuring some one else's reputation, or that he is wounding some one's religious susceptibilities, or that he is inciting people to violence or immorality.

Political Rights are concerned with participation in the administration of the state. They consist of the following :—

- Civil rights**
- (a) the right of permanent residence in the country ;
  - (b) the right to the protection of the state, even if the citizen is staying abroad ;
- Political rights**
- (c) the exercise of the franchise ;
  - (d) the right to participate in legislation ;
  - (e) the right to hold public offices ;
  - (f) the right to discuss freely governmental measures and policies, and to criticise officials and to freely express opinion on them.
  - (g) Sometimes such general political rights as those of association, petition or free publication.

In the exercise of these rights, a citizen must subject himself to such a regulation as will compel him to enjoy them consistently with those of others and with the welfare of the community he lives in.

### Duties of a Citizen

We have already seen that rights and duties are relative terms. Every right implies a corresponding duty or obligation. Citizens owe certain duties or obligations to the state in return for the rights and privileges granted by the same to them. In other words, the state gives protection to the citizens and confers upon them various benefits, and in return for these the citizens owe to the state certain services or duties. These duties or obligations no citizen can

**Obligations  
of citizen-  
ship**

disregard without causing great injury to himself and to the state he lives in. The interest of a citizen is not something different from that of the state or government, because it is the body of citizens that constitute the state or government. The well-being of the state means the well-being of the citizens. Let us consider a concrete example. Suppose the state is threatened by a foreign enemy. It is the duty of the citizens to help the state in warding off the invasion by offering military services. But suppose the citizens instead of enlisting themselves in the army sit idle. The state is defeated in the war and is brought under foreign domination. The freedom of the state is gone and therefore with that of the citizens. Hence it is evident that the interest of the state and that of the citizens are identical and no citizen should neglect the duties he owes to the state.

Freedom of  
citizens is  
bound up  
with that of  
the state

The chief duty of every citizen is obedience to law. If one citizen disobeys the law and is not punished, other citizens may dare disobey it. The result will be chaos and confusion and there will be no government. Government upholds the state and the interests of the community.

Obedience  
to Law

The community is larger than the state and the state is larger than the individual citizen. Hence any disobedience on the part of a citizen or citizens to the law is visited with punishment in order to safeguard the interest of the community, because individual interest is of little consequence as compared with general interest.

Another duty of the citizen is allegiance to the state. Allegiance means the whole-hearted service of the citizen to the state. Thus allegiance may mean (a) service in war, (b) support of the public officers in the performance of their duty and (c) performance of other public duties.

Allegiance  
to the  
State

Service in war implies the duty of every citizen of defending the state against danger. If the state is involved in war with another state, the individual must be prepared to sacrifice his own life for the safety of the state. Thus in helping to further the interests of the state, the citizen only furthers his own interest. In most states, military service is compulsory to-day. In others voluntary recruitment prevails in peace times and compulsory system is introduced in cases of emergency, i.e., in times of war.

Service in  
war

Every citizen should support the police and the legally constituted authorities in the suppression of a riot and revolution and the like. It is the duty of a good citizen to assist the authorities in maintaining peace and order within the state, and on no account should he do anything which can directly or indirectly disturb the public peace.

Helping  
public  
officers



The duty of allegiance also enjoins upon every citizen that he should give his services for public duties such as, holding public offices and recording his vote. In many countries in the past, public duties of some sort were compulsory upon every citizen and this meant some hardship to him. But in modern times almost all officers are regularly paid. So the holding of an office now-a-days is rather an advantage than an obligation.

In some cases the salary attached to the offices is abnormally low. In these cases, too, the citizen has to accept the office at a considerable loss. A first-rate barrister elevated to the bench and a first-rate businessman politician appointed to the ministerial office are instances in which the salary attached to is very inadequate when weighed against the onerous nature of the duties involved.

Again in modern democratic states, most citizens above a certain age possess a vote. It is true that every one can not occupy a definite public office but every one who is physically fit can vote. The exercise of this power of voting is very important. The government rests on the will of the citizens. Unless the citizens express their will through their votes, they cannot complain if the government is not conducted to their satisfaction. Hence the duty of voting is not only a moral and political duty but also is a necessity for the good government of the state.

No government can be maintained without money and this money must come in a large measure from the people in the form of taxes. Hence they must admit the right of the state to levy taxes, and they should punctually pay their respective measures of taxes.

## VIII. Hindrance to good Citizenship

The excellence of a government depends on the capacities of its citizens. These are intelligence, self-control and conscience. Without these qualities, no good citizenship is possible. But the average citizen is much below the required standard, for he is usually wanting in the one or the other of the qualifications. An average man is one of the units of men which compose the majority.

The obstacles that stand in the way of the proper discharge of the civic duties are mainly three in number —(1) Indolence, (2) Self-interest and (3) Party-spirit.

They are great obstacles in the way of the proper performance of civic duties. Duties which do not satisfy the individual self-

interest of a man are seldom carefully attended to In public affairs the spring of self-interest is absent Hence public duties are sometimes neglected, very few persons take them as imperative. Thus when a citizen finds that others about him can afford to do without performing their civic duties and that he is but a unit in a million, he becomes indolent. Therefore, it is no wonder that even the best men are sometimes found unwilling to exercise their right of voting or to serve on Municipalities, District Boards and other self-governing institutions.

Indolence

Education and the press have done much, no doubt, to decrease indolence, yet there are several causes which tend to increase it. They are an indulgent spirit, vast size of the modern states, less independence in huge communities and other interests competing with politics.

Causes  
tending to  
increase  
indolence

Indulgent spirit has fostered indolence in no mean degree In ancient Greece no breach of duty, either by commission or by omission, was tolerated. On the contrary it was promptly punished. Hence a citizen had to perform his duties carefully and betimes. He could not overlook them. Sometimes in order to perform them, he had to be stern and inflexible in his dealings with other citizens. Suppose a citizen proved unworthy of his office The duty of the citizen would be to express his disapprobation of the citizen in office by words and deeds, and his anger against him, to expose his faults, to eject him from his office and to punish him. But in modern times, the whole outlook of the duties of a citizen has changed. Manners having grown gentler and passions less violent, citizens have grown unreasonably indulgent towards one another even for their laxity in the performance of their important civic duties.

Indulgent  
spirit

The Greek city-states were small. Hence every citizen could take an active part in the administration of the states The modern states have a tendency to expand and thus a citizen with a single vote is like a drop of water in an ocean. Yet it must not be thought that his responsibility in the administration of the state is becoming less onerous, because his share in the same is getting smaller. On the other hand, this responsibility increases in proportion with the power that the state wields The most difficult duty of a citizen is to fight bravely for his convictions when he is in a minority. The task is difficult in proportion to the vastness of the community. Interests in various departments of culture, viz, art, science, literature, sports, trade and commerce, interfere with the discharge of the civic duties.

Size of the  
modern  
states

The indolence may express itself in any one or more of the following ways :—

Manifesta-  
tions of  
indolence

In democratic countries, efficient administration depends, to a great extent, upon the proper exercise of the privilege of voting.

Neglect to vote      "The government rests on the will of the people, and unless the people express their will through their vote, they cannot complain if the government is not conducted according to their desires."

Neglect to seek or serve in office      People who have leisure, wealth and brain should be in office to serve the state. But they avoid public life for enjoyment. This can be ascribed more to their thoughtlessness than to any conscious indifference to the call of duty on their part.

Neglect to fight      It is the duty of every citizen to help the government in putting down riots and insurrections and warding off foreign invasions.

Negligence in the performance of civic duty may be ascribed to the following causes.—

Neglect to study and reflect upon public question      (a) Want of time and opportunity after their hard struggle to earn their bread  
(b) Imperfect education which makes it impossible for them to form an independent opinion on any question of public interest

Individual self-interest      Self-interest is a dominating passion with man and impels him to abuses which affect the efficient administration of the state. Some of them are.—Buying of votes.  
Candidates for high public offices sometimes bribe voters who vote for unfit candidates. Voters often elect their own men in order to avoid the burden of taxes and to shift them upon other persons, classes and areas.

Party-spirit      Party-spirit is not altogether a bad thing. It brings in a spirit of emulation between the parties and helps to a great extent, the efficient administration of the state. But it is not an unmixed good. It becomes dangerous when men blindly follow a leader with a view to seek their own interest and prestige at the cost of the public interest.

## CHAPTER VII

### THE CONSTITUTION OF THE STATE

#### I. Definition of a Constitution

Austin defines a constitution as "that which fixes the structure of the supreme government." The structure or manner of organisation of government depends largely on the arrangement and distribution of the three functions of government—the legislative, judicial and executive. Every state must have a collection of forms by which the legal relation between the magistracy and subjects is determined and in accordance with which the exercise of the power of the state is regulated.

Three functions of Government

A system of laws and customs established by the sovereign power of a state to determine the formation, powers and mutual relations of the various bodies which exercise the functions of government is known as the "constitution" of the state. Hence Dicey defines a constitution as the product of "all rules which directly or indirectly affect the distribution or the exercise of the sovereign powers in the state." In popular use, however, the established form of government is called the constitution. The term is also sometimes used to designate an imaginary ideal, as when we speak of the theory of the constitution, meaning thereby some supposed principle to which the constitution should conform.

Dicey's definition of constitution

Lieber in his Political Ethics observes, "constitutions are the assemblage of those publicly acknowledged principles which are deemed fundamental to the government of a people. They refer either to the relation in which the citizen stands to the state at large, and, consequently, to the government or to the proper delineation of the various spheres of authority. They may be collected, and may have been pronounced at a certain date, such as the constitution of the United States; or the fundamental principles may be scattered, in acknowledged usages and precedents, in various charters, privileges, bills of rights, laws, decisions of courts, agreements between contending or otherwise different parties, etc., such as the constitution of Great Britain is."

Fundamental principles of Government

#### II. Classification of Constitutions

Classification of constitutions is necessary for a proper understanding of the peculiar character of a particular constitution.

Constitutions were classified in ancient Greece on a numerical or quantitative basis. If sovereignty or supreme power is vested in one person it is Monarchy; if in the 'few' persons, it is Aristocracy; and if in the many it is Polity. Aristotle, the father of Political Science, added an ethical differentia to this numerical classification. If the king rules for his own selfish advantage and not for the common good, monarchy will degenerate into tyranny. Similarly, if the 'few' rule for their own interests, aristocracy will degenerate into oligarchy, and if the 'many' rule for promoting their own class interest only, polity will degenerate into democracy. Aristotle further points out that in the classification of constitutions the question of number is accidental, that of wealth is essential. Hence, if in a state the rich form the majority and if they rule in their own interests the constitution would be oligarchical and not aristocratic.

Classifica-  
tion in the  
ancient  
world

Substantially the same principles of classification were adopted during the Middle Ages. The great English philosopher Hobbes, however, did not wholly approve of the Aristotelian scheme and made certain modifications in it. Neither the Aristotelian classification, nor its modification by Hobbes is quite satisfactory so far as the constitutions of the present day are concerned. Modern constitutions may be broadly divided into two categories, namely, democracy and dictatorship. Democracy is said to prevail wherever the ultimate political authority rests with the people. But in practice it is found that universal adult franchise alone is not sufficient to make the general body of citizens the real depository of political power. Some sort of equality in the distribution of wealth is absolutely necessary for the exercise of effective control by the people over the governmental machinery. There are, again, many points of difference between one democratic state and another. The type of democracy prevailing in England is not the same as that which prevails in the U. S. A. The democracy of Switzerland is quite different from that of England and America.

Modern  
Classifica-  
tion

Democratic constitutions may be divided into Federal or composite and Unitary or simple. A Federal state is a union of several states, which retain their independence in home affairs but combine for national or general purposes, as in the United States of America or Switzerland. England, France, Spain and Italy are Unitary states.

Federal or  
Unitary

A second basis of classification may be found in the methods by which constitutions are altered. If a constitution is to be altered and amended in a particular way different from that in which laws are usually made, it is called a Rigid constitution. If a constitution can be amended by the ordinary process of law-making it is called a Flexible constitution.

Rigid or  
Flexible

In the English constitution alterations can be made in exactly the same way in which ordinary laws are passed. But in America it is very difficult to alter or amend the constitution. The American Congress has no power to alter the constitution of the United States, while the English Parliament can change the English constitution in any way it likes. In other words, the English Parliament is the sovereign body but the American Congress is not. A Rigid constitution must be a written one but a written constitution may or may not be Rigid. Constitutions modelled on that of England are written but not invariably rigid.

A third basis of classification of constitutions is the relation of the Executive to the Legislature. If the Executive be subordinate to the Legislature the constitution would be Parliamentary; if the Executive be co-ordinate with the Legislature it would be Presidential. The constitutions of Great Britain, Belgium and France belong to the former type and that of the United States to the latter type. The ministers in England are responsible to Parliament, while the ministers in the United States are responsible to the President, the head of the Executive. In America, the Legislature, Executive and Judiciary have co-ordinate powers with and are absolutely distinct from one another.

Presidential  
or Parli-  
mentary

Democracy no longer holds the political field uncontested. Dictatorship has become a powerful rival of democracy to-day. It prevails in Germany, Italy, Russia and in the countries which have been annexed or subjugated by these states recently. These dictatorships have arisen out of three kinds of crises—the dissolution of long-established autocracies, the failure of democracy in the new countries created by the Peace Treaties of 1919 and the failure of democracy in the old states like Italy and Germany. Russia, Turkey, Portugal and Spain were all involved in the problems of finding a substitute for a government which had collapsed and of modernizing a backward country. Dictatorships may be divided into two groups—totalitarian and political. The totalitarian dictatorship has the following characteristics—the existence of a single party, with a prohibition of all other forms of political organization, an exaltation of the leader of the party as an autocratic ruler, and a determination to subordinate every aspect of national life to the creed of the ruling party. Political dictatorship, which prevailed in Poland and Yugoslavia, attempted to deal only with a political crisis and not to revolutionise the whole social and cultural life.

Forms of  
Dictatorship

### III. Written and Unwritten Constitutions

Some writers draw a line of distinction between the consti-

tutions which are written and those which are unwritten. A written constitution is one in which most of the provisions are embodied in a formally enacted document or a number of documents. A written constitution is the result of deliberate efforts to put down in a systematic form the broad principles of Governmental organization. An unwritten constitution, on the other hand, grows from precedent to precedent in course of time. It is made up largely of customs, usages, judicial decisions and a number of statutory enactments. Written constitutions are made either by a constituent assembly or by the legislative bodies. It may be granted by kings and princes also.

The distinction between written and unwritten constitutions, however, is not based on any scientific principle.

There is no constitution which is wholly written or wholly unwritten. The English constitution is said to be an unwritten one. But a large part of the constitution is already written. The Great Charter of 1215, the Petition of Right of 1628, the Bill of Rights of 1689, and the Act of Settlement of 1701 are important statutes which curtail the prerogative of the king. Personal liberty of the subjects is guaranteed by the Habeas Corpus Act of 1679; the qualification for voters is defined by the Parliamentary Acts of 1918 and 1928 and the Local Government in England is carried on according to the statutes of 1835, 1888 and 1894. These and other statutes, however, form only a small part of the whole constitution. The exact political function of the king, the relations between the House of Commons and the Cabinet, the position and functions of the Cabinet, and the relation between the ministers and the Civil Service are not to be found in any statute. The English constitution is, therefore, partly written and partly unwritten. The constitution of the United States of America is said to be a written one. But there has grown up a large body of unwritten conventions round the written constitution. The constitution of the U. S. A. is contained in the official edition in 31 pages only; but many cases have been fought over the interpretation of the clauses, and when the clauses of the constitution are set down with these cases as many as 700 pages are needed. This shows how even the most elaborate written constitution expands by judicial interpretation and growth of conventions.

It is often said that a written constitution safeguards the liberty of subjects better than an unwritten constitution. But this is not true. The old German constitution was

a written one, but it did not guarantee individual liberty. Individual liberty is protected, not by constitutional declarations but by the impartiality and

Distinction  
between the  
two is  
unreal

Individual  
liberty and  
constitution

independence of the judiciary. The distinction drawn between written and unwritten constitutions further misleads us to believe that all laws must be in a written form and there can be no customary law.

#### IV. Flexible and Rigid Constitutions

A Flexible, (or elastic) constitution is one which is, by its inherent nature, capable of change or modification by the same body and same method of action by which any other law can be passed, repealed or amended. That is, a flexible constitution is one which possesses no higher legal authority than ordinary laws and which may be altered in the same way as ordinary laws. Thus a flexible constitution is identical with the unwritten constitution of the other classification. The one notable example of this form of constitution is that of Great Britain, because the Parliament can change any law, ordinary or constitutional.

Definition  
of Flexible  
constitution

A Rigid (stationary or inelastic) constitution is one which by its inherent nature is with difficulty changed. It cannot be altered by the ordinary legislature acting in the ordinary way. It is hard and fixed. It can be repealed or amended by a special process and by a special body other than the ordinary legislature to which ordinary laws owe their being. The written constitutions of the United States of America and France are rigid. It must be noticed that all written constitutions are more or less rigid.

Meaning of  
Rigid constitution

The great merits of a flexible constitution are its elasticity and adaptability. Being alterable with the same ease and facility with which ordinary laws are changed, it can adjust itself to the new changing conditions of the society. It is particularly adapted to the needs of a progressive state. At a time when the popular passion rises very high and demands change in the constitution, it insures a legal means of satisfying the popular cry by meeting the same half-way without risking a wholesale change in the constitution or a revolution. That is, whenever any change becomes necessary, it can be readily effected without any great difficulty.

Merits of  
Flexible  
constitution

A flexible constitution lacks in permanence, as it can be often twisted or bent so as to meet the emergencies or the changes in the popular opinions. It is more or less unstable and hence cannot be relied upon as permanently safeguarding the rights and liberties of the people, particularly in a community whose training has been imperfect

Its  
instability



or which is subject to fits of political apathy alternating with those of intense zeal for reform.

The great merits of the Rigid constitution are certainty, definiteness and stability. Its provisions being embodied in a written instrument with great care and deliberation, its alteration is very difficult. It cannot be bent and twisted according to the demands of the moment. Hence it is less likely to be affected by the violent changes of popular passion.

Merits of  
Rigid  
constitution

The Rigid Constitution has certainly some drawbacks, too. The most notable one is that if changes become necessary, they can not be introduced except with the greatest difficulty. Hence when such a constitution does not suit the existing conditions, the temptation for violating the same becomes awfully accentuated.

Incentive to  
break it

## V. Amendment of Constitution

Amendment of the constitution becomes a crying necessity when any vital change of circumstances or development of new interests arise in the country. The constitution becomes a stumbling block to the growth of a nation's life, when it refuses to adapt itself to the progress of time. The merit of the flexible constitution lies in this that it can be stretched and bent so as to meet emergencies without breaking the framework and when emergency has passed it slips back into its old form like a tree whose outer branches have been pulled aside to let a vehicle pass.

Need of  
amending  
constitution

In the case of flexible constitution, every part of it can be expanded, curtailed, amended, or abolished by the ordinary legislature with as much ease and as freely as other laws, e.g., that of Great Britain and Italy. The flexibility of the English constitution is said to be at once its glory and danger. The safeguard against any violent or abrupt change in the constitution in England lies in its "reverence for the laws", in the conservative instinct of the race.

Amendment  
of Flexible  
constitution

In the case of the Rigid Constitution, it can be changed only by some extraordinary method of legislation. The constitution of the U. S. A. prescribes four possible processes of amendment.

Method of  
amending  
the constitution  
in  
U. S. A.

(1) Two-thirds of both Houses of the Congress may propose amendments, or (2) the legislatures of two-thirds of the several states shall call a convention for proposing amendments, and ratification shall take place by (3) three-fourths of the legislatures of the several states, or (4) by conventions of three-fourths of the

several states. In practice, however, amendments have taken place by proposal by the Congress and ratification by the legislatures of the States. But the 'two-thirds of the Congress' has been interpreted as two-thirds of a quorum. A quorum is defined in the Constitution as a majority of each House. The procedure of amending the constitution of France is much more simple than that of the U. S. A. In France, the Senate and the Chamber of Deputies propose an amendment by separate resolutions. If it is passed by an absolute majority in both the houses, the Chambers meet together in a joint sitting, called the National Assembly. An absolute majority of the total number of members is necessary for the final acceptance of the amendment. In Australia the proposal for an amendment must be passed by an absolute majority of each House of Parliament. If there is disagreement between the two Houses, the House proposing it may pass it again after an interval of three months with or without amendments offered by the dissenting House and then refer it to the electors for acceptance. Whether the two Houses agree or not the proposed amendment must be submitted to the electors between two to six months after the passing of the bill by one or both the Houses. If it is passed by a majority of all the electors voting and by the majority of states, it becomes valid.

In France  
and  
Australia

The procedure of amending the constitution in Switzerland combines the advantages of easy change with that of attaching extra majesty to the constitution. Separate processes are prescribed for total and partial revisions. One of the Houses or both the Houses may pass a resolution for total revision. Fifty thousand voters may also demand a total revision. Then the matter is referred to the people and if they accept it, new elections of both the Houses to prepare the revision takes place. In case of partial revision the proposal is made either by the two Houses or by petition of 50,000 voters. The proposed amendment must, then, be referred to the people and accepted by the majority of voters and by a majority of the Cantons.

Procedure in  
Switzerland

## CHAPTER VIII

### FORMS OF THE STATE AND OF GOVERNMENT

#### I. Forms of the State

All states are alike in their essence. All must possess territory, population, government and sovereignty. All states are alike sovereign. Hence from the logical point of view it is impossible to classify states. The only way in which states may be differentiated is according to structural peculiarities of their governmental organisation.

Structural  
differences  
in states

Some writers have classified states from the standpoint of their physical elements, i.e., according to their size and population. They have thus divided states into "city state", "national state", and "world empire". But this is a mere historical description of states and not their logical classification.

Size is no  
criterion

Well-known writers like Leacock and Garner have devoted chapters in their books to the classification of states. But Leacock himself quotes with approval the following remark of Willoughby — "It need not be said that there can be no such thing as a classification of states. In essence they are all alike, each and all being distinguished by the same sovereign attributes".

Classifica-  
tion of  
govern-  
ments and  
not of states

Garner divides states into monarchies, aristocracies, and democracies on the basis of the number of persons in whom the sovereign power is vested. But this division falls more properly under the heading, forms of government, than under forms of the state. He again divides states into simple and composite, but in a foot-note admits that "the terms 'simple' and 'composite' are in strictness descriptive of forms of government rather than forms of state."

#### II. The So-called Mixed States

Many writers have conceived the idea of labelling governments in which the several features of monarchy, aristocracy and democracy are united in varying proportions as Mixed states. Plato, Aristotle, Tacitus and many mediaeval and modern writers accepted this designation. The constitution of the Roman Republic, having consuls, senate and popular assemblies to represent the monarchical, aristocratic and democratic principles respectively is held forth as an example of the Mixed constitution. Similarly, the King, the House of Lords and the House of Commons in England are said to represent the three forms of government.

Meaning of  
Mixed States

But modern writers like Lewis and Bluntschli have shown the absurdity of the term, 'Mixed state.' Thus Lewis observes,—  
 "Monarchy is the government of one, aristocracy of more than one, therefore, as a state cannot be governed both by one person and by several, it cannot at the same time, be both a monarchy and an aristocracy. Aristocracy is a government of less than half, democracy of more than half the community ; therefore as a state cannot, at the same time, be governed by more and less than half its members, it cannot be, at the same time a democracy. Still less can it be governed by one, by a minority, and a majority of its members all at once." From the standpoint of the necessary unity of sovereignty, Bluntschli says,—“Such a mixture as this does not create a new form of state, for the supreme governing power is still concentrated in the hands of the monarch, or of the aristocracy, or of the people.

No mixed  
state is  
possible

### III. Other Classifications of Governments

Up to the middle of the XVIIIth century the Aristotelian classification of governments held the ground. Then Montesquieu in his Spirit of the Law (1748) proposed a division into republican, monarchical and despotic governments. According to him, the Republican government is that "in which the people as a body, or even a part of the people, has the sovereign power, monarchical, that in which a single person governs, but only by fixed and established laws ; whereas in despotic government a single person, without any law or rule, conducts everything according to his will and caprice." Rousseau classified governments into monarchies, aristocracies and democracies and sub-divided aristocracies into natural, elective and hereditary.

Classification  
by  
Montes-  
quieu

While accepting three-fold divisions of Aristotle, Bluntschli adds a fourth form, namely Theocracy, the perverted form of which is Idolocracy. He defines Theocracy as that form of government "in which no human authority has been recognised, in which the supreme power has been attributed either to God, or to some other super-human being or to an Ideal. The men who exercise rule are not regarded as its possessors, but as the servants and viceroy of an unseen ruler. "In early societies, e.g. among the Jews or the Moslems the influence of theocratic societies was very great. But it may be pointed out that though the sovereignty may be imputed to God, yet His will must be humanly interpreted and enforced either through a prophet or a body of priests. From the standpoint of political science and constitutional law that prophet or body of priests is or are the actual legal sovereign. Hence in Political

Classifica-  
tion by  
Bluntschli

Science there is no place for Theocracy, which must be treated as a form of monarchy or aristocracy as the case might be.

The great American publicist, Burgess divides governments according to administrative principles and structural peculiarities.

Division of  
Govern-  
ments  
according to  
structural  
peculiarities

His four canons of distinction are :—(1) the identity or non-identity of State and Government. He uses the word government to describe the ordinary administrative and legislative organs, and the State to designate the body politic as organised in constitutional convention, or otherwise, for the creation of fundamental or constitutional law ; (2) the consolidation or distribution of governmental power ; (3) the tenure of office of public officials ; and (4) the relation of the legislature to the executive, that is, whether the government be presidential or parliamentary. In accordance with these principles he characterises the United States Government as a democratic, limited, representative, federal, co-ordinate, elective and presidential Government. The government of England is at the same time democratic, aristocratic and monarchic, centralised, co-ordinate, partly elective, partly hereditary, and parliamentary. This division is rather a description than a classification of government.

The most scientific and practical classification of governments has been proposed by Sir John Marriot. Marriot finds that it is impossible to classify governments on a single principle and hence he adopts a three-fold basis.

Marriot's  
classification

Modern governments might be divided into Federal or composite and Unitary or simple. A Federal Government is one in which the constitution divides the powers of government into two groups and distributes them between a common central government and the various local governments. The government of the United States of America is an instance of a federal union composed now of forty-eight states. At Washington, this union has a central government upon which the national constitution of

Sphere of  
activity is  
well defined

the country has conferred certain powers of general character affecting the entire country, and has left all other powers (with some express exceptions) to the states themselves so that the local governments may act independently in so far as matters of local interest are concerned. Thus while such matters as commerce, foreign affairs, war, coinage of money and the like, are under the control of the central government in the interest of the whole country, each state is left free to frame its own system of local government, to enact its own laws of marriage and divorce, the press, religion, education, business, labour etc. Thus it has two sets of governments—the one central and the other local. The central government is entrusted with matters which require to be uniform throughout

the country, while each state or local government is entrusted mainly with the administration of matters of local interest. In other words, each of them has a well-defined sphere within which it can act without interfering with, or being interfered with, by the other. The United States of America, Switzerland, Canada and Australia have federal governments.

In a Unitary form of government the constitution itself does not divide the powers of government between a common central government and the local governments. In this system, the constitution confers all the powers on the central government which may in its turn delegate some of them to the local governments, reserving to itself the powers of withdrawing them at its discretion. In other words, the different states constituting the entire state are at the mercy of the central government which can deal with them in any way that it thinks fit and proper. The governments of Great Britain, France, Belgium, Italy and most of the other states of Europe belong to this class. That is, the countries, cities and boroughs of England, the departments of France, Provinces of Belgium and Italy are all subject to the control of their respective central governments; yet they enjoy almost as much local autonomy as the American states.

A Unitary  
form of  
Government

Government may be classified as parliamentary or presidential in accordance with the relationship of the executive to the legislature. Leacock has thus defined these two types—"In a parliamentary government the tenure of office of the virtual executive is dependent on the will of the legislature; in a presidential government the tenure of office of the executive is independent of the will of the legislature."

Parliamentary and  
Presidential  
Government

The Cabinet or Parliamentary system has for its organs of government:— (1) A titular Executive head of the State, either elected for a term of years as in France and Portugal, or hereditary as in Britain, Italy, Holland, Belgium, Greece and Norway. The titular head is not responsible to the Legislature nor ordinarily removable by it. He may be called President as in France, but as the real executive power is not vested in him, the form of government is not called Presidential. (2) A group of Ministers, virtually, if not formally, selected and dismissible by the representative Legislature, and responsible to it. This group is known as the cabinet. (3) A legislature elected for prescribed term of years but liable to be dissolved by the cabinet. The best examples of the parliamentary executive are to be found in France and England.

Peculiarities  
of Parliamentary  
form of  
government

The Presidential form of Government may be best illustrated by the constitution of the U. S. A. The Presidential System consists of (1) the President, who is the real executive

head of the State. He is elected by the people for a term of years and is not removable by the legislature except by the rare process of impeachment. He is not a member of the legislature but entitled to address it. (2) A group of ministers, appointed and dismissible by the President. The ministers are not allowed to sit in the Legislature, and are not responsible to it. (3) A Legislature usually consisting of two Chambers, elected by the citizens for a term of years. It cannot be dissolved by the head of the executive. But the President can veto the laws passed by the legislature, which however can enact them by repassing them by a majority of two-thirds in each Chamber.

The designation of this form of government as Presidential is not a happy one. "The word presidential government," says Leacock, "is somewhat a misnomer," since a presidential government may not have a president, and a country which has a president need not have a presidential government. Thus in Imperial Germany, there was no President, though the government was really of a presidential type. Conversely, in France there is a president but the Government is not presidential. Dr. F. Strong prefers the term "fixed executive" to "presidential Government." He divides governments on five grounds. (1) The nature of the state to which the constitution applies—it may be unitary, federal or quasi-federal; (2) the nature of the constitution itself—it may be rigid or flexible; (3) the nature of the legislature—on the one hand the principles of manhood suffrage and single-member constituency may obtain and the second chamber may be elective or partially elective; on the other hand the principles of adult suffrage and multi-member constituencies may obtain and the second chamber may be non-elective; (4) the nature of the executive—it may be parliamentary or non-parliamentary; (5) the nature of the Judiciary—the Common Law or Administrative Law may be applicable to it.

#### IV. Parliamentary and Presidential Governments

The Parliamentary type of government can succeed only where the Party system has been highly developed. The merit of the Parliamentary system are the following:—When the Executive is supported by the majority in the Legislature, it can work with the maximum of vigour and promptness. The ministers by their presence in the Legislature can correctly interpret the will of the Assembly; and the members can by their right of questioning ministers call attention to any grievances felt by their constituencies or by the public. The close harmony between the

Characteristics of the Presidential system

Fixed executive

Development of party system is essential

Legislature and the Executive enables the Cabinet to pass through such legislation as it thinks necessary. If anything goes wrong people can fasten responsibility on the party in power. The Parliamentary system brings able men to the front and gives them a position from which they can prove their ability. When a cabinet falls, the transfer of power to another is a comparatively short and simple matter.

But these merits of the Parliamentary system are balanced by serious defects. It intensifies the party spirit and keeps it to the look-out for discrediting the other. Much time is wasted in useless debates, which are protracted by the opposition with the hope of discrediting the cabinet. If the ministers are subservient to the members as in France, or to the Parliamentary caucus as in Australia, they lose the respect of the nation. On the other hand, if the ministers render the members comparatively powerless, as in England, the credit of the Legislature is lowered thereby. The stability of the executive, under this system, depends on the strength of the Party system. In France, owing to the prevalence of the group system, the composition of the executive is constantly changing, which is a bad feature in any government. "A system which makes the life of an Administration depend upon the fate of the measures it introduces disposes every cabinet to think too much of what support it can win by proposals framed to catch the fancy of the moment, and to think too little of what the real needs of the nation are; and it may compel the retirement, when a bill is defeated, of men who can be ill-spared from their administrative posts."—(Bryce).

Frequent attempts to dislodge the ministry from power

It takes too little account of the real needs of the nation

The Presidential system makes provision for safety, rather than speed. The President being once elected, cannot be disturbed by the whims of the party feeling and the transient modes of the electorate or the legislature. But the separation between the executive and the legislature provides no certainty that the Legislature will carry out the wishes of the Administration, however reasonable. "The Presidential system," says Bryce, "leaves more to chance than does the Parliamentary. A Prime minister is only one out of a cabinet, and his colleagues may keep him straight and supply qualities wanting in him, but everything depends on the character of the individual chosen to be President."

Presidential system leaves too much to chance

In Presidential form of government, the executive is constitutionally independent of the legislature as regards his tenure and to a large extent also as regards his policies and acts. Hence follows greater concentration of responsibility in the executive and with it stronger formulation

Merits of the Presidential system



of policy It is best suited to a country which has a federal type of constitution In presidential form of government, the dual control of plural executive is avoided, and the sphere of the executive as well as of the legislature is strictly defined by the constitution.

The defect of Presidential government lies in the fact that the executive has little control over the legislature There is the danger of deadlock between the two organs of the government, the executive and the legislature. The advantage of close relation between the executive and the legislative department is therefore absent. The Executive, being irresponsible to the legislature, cannot be turned out of office when the House of Representatives wishes it. The executive will continue in its office as long as its tenure permits In times of crisis, under the parliamentary form of government, the cabinet can choose a leader for guidance, but under a Presidential form this cannot be done. "Constitution cannot be altered by any authorities within the constitution, but only by authorities without it. Every alteration of it, however urgent or trifling, must be sanctioned by a complicated proportion of state or legislatures."

Demerits

## V. Bureaucratic Form of Government

"A bureaucratic government is one which is composed of administrators especially trained for the public purpose, who enter the employment of the government only after a regular course of study and examination, and who serve usually during good behaviour and retire on pensions." They are subject to a very rigid discipline. They have to devote their time to the discharge of the public duties and are not allowed to have any other occupation. In this system, government service has more or less the complexion of a profession and the officials acquire and develop a sort of routine life. They tend to become a class having no touch with the rest of the population. Such a government is neither responsible to the people nor much affected by public opinion. It is, in short, very largely a government of men rather than of laws. It thinks more of form than of substance. Its officials being specially trained for the public purpose, it ensures an efficient administration. But efficiency of administration is not always the sole end or test of a good government. Besides, it does not foster patriotism, self-reliance or loyalty. Again some of the most important ends of the political system, *viz.*, the education of the people in political matters, the stimulation of popular interest in political matters, and the cultivation of loyalty and patriotism on the part of the masses, cannot be accomplished under the bureaucratic system.

Conflict between efficiency and political training of the people

## VI. Merits and Demerits of Monarchical Government

Monarchy is the oldest and almost universally prevalent form of government in early and primitive societies. When a tribe is to fight for its very existence against a host of enemies, when peace and order is to be maintained in a community, the rule of a strong man is conducive to the best interests of all concerned. It is the monarch who proves to be the chief source of unity in a community in which disruptive forces are naturally very strong.

Origin of  
monarchy

Examples of two forms of monarchy are found in history—Absolute Monarchy and Limited Monarchy. Absolute Monarchy denotes that the final authority in making, interpreting and executing law belongs to the king. Absolute Monarchy is often characterised by vigour and energy of action, unity of counsel, promptness of decision and simplicity of organisation. On the eve of the modern age absolute monarchs like Louis XI of France, and Ferdinand and Isabella of Spain curbed the centrifugal tendencies of feudalism and brought about national unification. The sovereignty of national state is due to the absolute monarchs. In the eighteenth century we find the absolute monarchs guided by the principle of enlightened despotism. Monarchs like Peter the Great and Frederick the Great rendered invaluable services to the people of Russia and Prussia respectively. But not to speak of pure and simple despotism, the benevolent despotism of the eighteenth century suffered from some glaring defects.

Absolute  
monarchy

The chief merits of Monarchy are that it ensures secrecy of counsel and promptness of decision. Hobbes preferred a monarchical form of government on account of its following merits: A monarch's private interest is more intimately bound up with the interests of his subjects than can be the case with the private interest of the members of a sovereign assembly. Hence the monarch will devote himself to the promotion of welfare of his subjects. Whereas the resolutions of a monarch are subject only to the inconsistency of human nature, those of an assembly are exposed to a further inconsistency arising from disagreement between its members. A monarch "cannot disagree with himself out of envy or interest, but an assembly may, and that to such a height as may produce a civil war."

Merits of  
absolute  
monarchy

But Absolute Monarchy has been the cause of much misery and degradation of human beings. The monarch is found often incompetent for the great task of governing a people; he is misled by the evil counsel of the selfish and designing

courtiers who surround him. Court intrigues, wars of succession and callous disregard of the interests of the people are very often associated with absolute monarchy. The Court is usually plunged in luxury and debauchery and thus sets a bad example to the people. The history of Imperial Rome and Mughal India amply illustrates the inherent defects of the monarchical system of government.

The enlightened despots did not entrust any power to the people. They sincerely desired the good of their subjects, provided always that it was dispensed by themselves, and did not conflict with their selfish interests. Reforms imposed from above failed to rouse the sympathy of the people. "No reform can produce real good," says Buckle, "unless it is the work of public opinion, and unless the people themselves take the initiative." Moreover, the work of a benevolent despot might be totally undone by his tyrannical and selfish successor. Hereditary monarchy depends too much on accident to guarantee the perpetuity of any system of reform.

Limited Monarchy is one which is controlled by a constitution. The greatest example of Limited Monarchy is England. While ministers come and go, the English king remains. "As the irremovable adviser of successive ministers, the sovereign can do much to secure the continuity of foreign policy, and to prevent the foreign relations from being at the mercy of sudden impulse"—(Masterman). Gladstone testifies to the value of royal intervention in the following words:—"The aggregate of direct influence normally exercised by the sovereign upon the counsels and proceedings of the ministers is considerable in amount, tends to permanence and solidity in action, and confers much benefit on the country."

Limited monarchy provides also a permanent head of the executive and avoids the turmoil of periodical election. But the chief defect of limited monarchy is that it affords no guarantee that a strong, vigorous, or trained person will succeed to the office, as it allows the choice to be determined by the accident of birth.

## VII. Merits and Demerits of Aristocracy

The Greek word "aristos" means best and aristocracy is the government of the best. But the difficulty lies in choosing the criterion of the best. In history we find examples of aristocracy of birth or family, aristocracy of wealth; aristocracy of elder statesmen; and of priestly and

military aristocracies. Birth in particular families, however, does not guarantee the excellence of those born ; weaklings, imbeciles, licentious and arrogant fools are often found to be born in high families. Wealth or property too, does not insure the possession of qualities which are essential in good administrators. Those who inherit wealth may or may not be capable men. On the other hand, high political capacity is sometimes found in poor men. Age or military prowess does not invariably qualify a man for conducting the government. Aristocracies of birth, wealth, and age are all examples of artificial aristocracy. Such a form of government is euphemistically called the government of the best. In reality, it is nothing but oligarchy, that is, government of a few for their own interests.

Oligarchy, as a form of government, is not without merits. Its chief merit is conservatism. It tries to avoid innovations, lest those in power should lose it. Primarily for this reason oligarchy has often proved a very stable form of government, as is exemplified by the long existence of the Venetian Oligarchy. It is able to pursue a consistent policy and hold a persistent course in foreign affairs, paying little regard to moral principles. Domestic government, too, has been often efficient under an oligarchy, because the value of knowledge and skill is understood better than has yet been the case in democracies.

In spite of these merits oligarchy suffers from numerous defects. It implies class rule and class rule is essentially selfish and arrogant. It is often unsympathetic to the masses. It judges questions from the point of view of its own interest and does not care to confer more benefit on the classes beneath it than it feels to be demanded by its own safety. Moreover, faction fight is a characteristic of oligarchy. Jealousy and quarrels between the members of the leading families distract the State, retard legislation and corrupts the administration. Lastly, when a people advances in knowledge and prosperity, it is sure to grow restive and discontented under the rule of the few, who exercise irresponsible power.

There is another kind of aristocracy, however, which may be termed the natural aristocracy, and without which democracy degenerates into the rule of the mob. "Free government cannot but be," observes Bryce, "and has, in reality, always been an Oligarchy within a Democracy. But it is Oligarchy not in the historical sense of the rule of a class but rather in the original sense of the word, the rule of Few instead of Many individuals, to wit, those few whom neither birth nor wealth nor race distinguishes from the rest, but only Nature in having given to them qualities or opportunities she has denied to others."

## CHAPTER IX

### DEMOCRATIC GOVERNMENT

#### I. Primitive Democracy

The origin of democracy may be traced to the most remote period of human history. In the small hunting, or collective group, which preceded the advent of the organised agricultural tribe, the natural products of the land were shared, on a communal basis, among the members of the group. Even when the hunting band settled down as cultivators of the soil, primitive communism and democracy in everyday life persisted. Kingship was gradually emerging indeed, but the administration of justice appears to have been effectively in the hands of the tribal council

We find evidence of this primitive democracy among the three widely different peoples of ancient times. The Sabha and the Samiti of the Indo-Aryans controlled the government of the tribe in the early Vedic period in India. Homer depicts a society where the power of the king was subject to the limitation that when an important decision had to be made, it was necessary that he should convince, not merely the elders in council but also the general body of freemen in assembly. In the first century A. D. the German tribes had a remarkable democratic constitution. Tacitus tells us that monarchy was exceptional among them. Even where kingship existed, the monarch was elected and without the concurrence of the assembly, he had no power to take important decisions affecting the whole tribe.

But this primitive democracy did not survive the period of migration and conquest which followed the age of tribal settlement. In long periods of continuous wars kings strengthened their authority and in many places made themselves absolute. But there is no universal law of political development. Despotism found more congenial soil in the East than in the West.

#### II. Democracy in Ancient India

The researches in the history and literature of ancient India have proved beyond doubt the existence of Democracies in ancient India. The Vedic king was controlled by the Sabha and the Samiti. In the Buddhist period the Vajjians, composed of the Videhas of Mithila and the Lichchavis of Vesali (Muzaffarpur District) were governed by a democratic form of government.

The Buddha is reported to have told Ananda that "So long as the Vajjians hold these full and frequent public assemblies, so long may they be expected not to decline, but to prosper.

So long, Ananda, as the Vajjians meet together in concord, and carry out their undertakings in concord—so long as they enact nothing not already established, abrogate nothing that has been already enacted, and act in accordance with the ancient institution of the Vajjians as established in former days—so long as they honour and esteem and revere and support the Vajjian elders, and hold it a point of duty to harken to their words—so long may the Vajjians be expected not to decline but to prosper." Here the Lord carefully analysed the usual defects from which democracies suffer and warned them against the danger of dissensions.

*The Buddha on the condition of success of democracy*

Kautilya in his Arthashastra refers to the Vriyikas, Lichchivikas and Mallakas in the east, the Kurus and Panchalas in the centre, the Madrakas in the north-west and the Kukuras in the south-west of northern India as democracies. He advises monarchs to promote dissensions among them and then to conquer them. The Mauryan imperialism weakened the democratic states very much. Still at the time of Samudragupta we find that the Yaudheyas, Malavas, Arjunayanas, Kunindas and Vrishnis were flourishing under democratic government. It was the invasion of the Hunas which finally destroyed the democratic states in ancient India.

*Republics from the 400 B.C. to 500 A.D.*

The Santiparvam of the Mahabharata contains excellent rules by observing which Democracies can become prosperous. It advises the Ganas or Democracies to have a sort of natural aristocracy, that is, the government of the best. Thus it declares: "The Ganas that pay due respect to the wise, the valorous, the active, and the men of steady efforts in business acquire prosperity. The Ganas that are strong in resources, brave, expert in the use of arms and well-versed in the Shastras rescue the bewildered in times of grave danger. The Gana leaders should be respected as the worldly affairs depend to a great extent upon them."

*Natural aristocracy*

### III. Greek and Roman Democracy

The Homeric kingship gradually died out, being replaced by elected magistracies. Power passed, in most cities, to the heads of the chief families, who were also rich and the lenders of money. Their arrogance and their oppression on the poorer citizens provoked risings. The result of these tumults was either the seizure of power by the bulk of the well-to-do citizens or by single individual, known as the Tyrant. Ultimately power passed to the general body of free citizens.

In the ancient world democracy had the fullest development at Athens. In the age of Pericles the popular assemblies, known as the Ecclesia became actually the governing and not merely the electing and controlling body. All the most important governmental decisions, including the management of the whole foreign policy of the state and the initiation of legislation were determined by it. Questions of finance and religion, complaints against the public conduct of individuals, passing of new laws and amendment of existing ones were settled by it. Citizens were paid for attending the Ecclesia.

Democracy  
in the age  
of Pericles

The disadvantages of direct democracy are illustrated by the history of the Athenian democracy. The people could not restrain their passions and consequently party feuds and selfish interests got the upper hand. The citizens interfered too much with the administration and hence it was found difficult to secure continuity in state policy.

Defects of  
direct  
democracy

It would be wrong, however, to say that the Ecclesia was the sovereign body. The sovereign was the constitution, and the constitution was protected by the courts of law. "There was no strictly legislative sovereign at Athens, no one body whose mandate had immediately the force of law; for the Athenian, like the Greek citizen generally, conceived himself to be living under the impersonal sovereignty of law itself." The popular jury courts were an essential part of the democratic constitution, since they made effective the subordination of the magistrates to the popular will. Every citizen was entitled to take the judicial oath, and a small fee was introduced to compensate him for his loss of time.

Rule of  
Law in  
Athens

But the Athenian democracy proved a failure in foreign policy. Greek passion for freedom and self government produced an antagonism and a lack of compromise in inter-city relations, which even imminent danger from foreign invaders failed to correct. Moreover, democracy at Athens, in its extreme form, had always been partly dependent upon tribute from subject states. It had proved to be a very expensive form of government; and in the fourth century when she lost her empire, she had not the resources to maintain a consistent and stable democracy.

Causes of  
failure

At first Rome was a monarchy, but later the kings were driven out. Power fell into the hands of patricians. Then a long struggle between the patricians and plebeians which ended in the establishment of equal rights for the plebs watched over by officers, called Tribunes. In this republican constitution there were three elements of government which were supposed to balance and check one another. First the monarchical element manifested itself in the office of the

Roman  
democracy

two consuls, who were elected annually. Secondly, the aristocratic element was embodied in the senate, an assembly with great legislative powers. Thirdly, the democratic element existed in the meetings of the people in three sorts of conventions according to divisions of land or people

But the Roman democracy was fundamentally different from the Athenian democracy. The Roman people, consisting mainly of peasants, had neither the will nor the capacity to govern themselves, but were perfectly content to elect their magistrates and to express their opinion occasionally on projects of legislation. They had entire confidence in the governing class and their loyalty made the Senate omnipotent. The Roman constitution was that of a city-state but when Rome gradually became a world-state, the republican form became inconsistent with the facts. She did not devise any system of representation and thus could not give her subject-peoples a share in the government. Ultimately, the Roman republic gave way before imperialism.

Difference between the Greek and the Roman democracy

#### IV. Difference between Ancient and Modern Democracy

Ancient democracy was that of the primary assembly, in which the people spoke with an immediate voice. The size of the state was so small that it was theoretically possible for all citizens to meet together in a place and discuss government affairs. The size of the modern state is so big that representative system has to be introduced to insure democratic government. In short, ancient democracy was direct and modern democracy is indirect or representative. In the modern state there is the essential contrast between the electorate and those to whom, as a result of their experience or professional ability, the actual administration of public affairs is entrusted.

Representation unknown in the ancient world

On the other hand, in Athens, the machinery of government was deliberately constructed with a view to ensuring the participation in public affairs of nearly all the citizens. Membership of the council of Five Hundred and of the law courts, and the tenure of the great majority of public offices depended on the accident of the lot, whilst the short term, combined with ineligibility for re-election, practically guaranteed that every citizen should take his turn in administrative or judicial service. "To a modern eye," observed Bryce, "the strangest part of all this strange frame of government was the plan of leaving to chance the selection of nearly all officials except those generals for whom military skill was indispensable."

Use of lot was frequent

Woodrow Wilson opines that class subordination was the



essence of ancient democracy In Athens there were 50,000 citizens, but 100,000 slaves. So according to him, it was only a broader aristocracy. But Barker points out that it must not be thought that each of the 50,000 was the owner of one or two slaves, whose possession made him a gentleman at leisure Aristotle wrote that the poor used the wife or the child in lieu of slaves, and the poor constituted a majority of the citizens in almost all democracies. The slaves were public servants, hands in factories or mines or lackeys in great houses. There was in reality very little of an aristocratic flavour in a Greek democracy

In the modern democratic governments there is some kind of separation between the executive, legislative and judicial organs.

But in ancient democracies all the functions of government were fused together under the sole control of the people. Nor was there any distinction between central and local government. Party system is essential for the successful working of modern democracy Ancient democracies were conspicuous by their absence of party system, in the modern sense of the term.

Another fundamental difference between the ancient and the modern democracy is to be found in the conception of relation between the state and the individual "The modern

democratic state exists for the sake of the individual ; the individual, in Greek conception, lived for the State.

The ancient State recognised no personal rights, all rights were state rights ; the modern state recognises no state rights which are independent of personal rights," But the totalitarian states of to-day seek to control every aspect of life of the citizen Rights of free press, free meeting, free exercise of religion, and such other definite limitations of the power of the community to regulate the lives of individuals were alien to the idea of the state both in Greece and in Rome.

## V. Democracy in the Middle Ages

With the fall of the Roman republic the rule of the people came to an end in the ancient world. All over Europe was seen the rapid development of the phenomenon of feudalism.

Feudalism is the name given to "an organisation based on land tenure, in which all men from the highest to the lowest are bound together by reciprocal duties of service and defence." It grew up in Western Europe after the conquest of the Roman provinces by the German tribes. In those turbulent days, when life and property were unsafe, rich men wanted to have followers and the common people to have some lord to protect

them. Hence kings and rich men granted lands to persons of inferior rank on condition of service.

In a feudal country the king was, in theory, the master of all the lands of the country. He granted estates to the lords, called the tenants-in-chief, who again, through a process known as sub-infeudation, let out their lands to inferior classes. A lord had the right to judge, tax and command the persons living on his estate. He lived like an independent prince in his manor. Those who held land from him were princes on a smaller scale. The actual cultivators of the soil were in the lowest grade of the social scale. Feudalism thus organised society in a pyramidal structure. Its effect was to weaken the power of the king who could not control his mighty vassals. But it prevented the growth of absolutism. There was, however, no genuine measure of constitutional control over the executive government, vested in any representative body, during the Middle Ages. The nearest approach to this was in 15th century England, where the king's officers were occasionally impeached.

Structure of  
feudal  
society

Services of  
feudalism

Representative assemblies originated in Western Europe in the 12th century. The idea of representation had always been latent in the system of the Christian Church. The election by cathedral and diocesan clergy of delegates to represent them at synods associated together the notions of representation and election. It was for judicial and administrative purposes that representation was first employed by the secular state. Gradually the monarch employed this system to cover financial, judicial, and ultimately, legislative business. The first representative assembly appeared in Aragon in 1133 and in Castile in 1162. Then the system was introduced in England and France.

Elective  
system in  
the church

In the Middle Ages democratic government prevailed in the Italian city-states. Bryce traces the progress of popular government in the modern world from its obscure Italian beginnings in the eleventh century A. D. But in the fifteenth century the democratic principle was visibly on the decline. Early in the fourteenth century, however, the peasant communities of Switzerland adopted an oligarchic form of government, tinged by democracy.

Democracy  
in Italy and  
Switzerland

## VI. Democracy in the Modern Age

At the beginning of the modern age, in the sixteenth century, the era of New Monarchy dawned upon Europe. The decline of parliamentary legislatures was noticeable everywhere except in England where Tudor Parliament, in co-operation with the

Crown, carried through important legislation. The prince was largely autocratic in executive government. The ministers were responsible to him alone. But a new state—the United Netherlands was formed and was governed by representative machinery. In Switzerland direct popular legislation was an occasional feature.

The New  
Monarchy

The principle of absolutism gained strength in the continental states in the seventeenth century. Absolute government of Louis XIV became the pattern for neighbouring states. Representative assemblies were either not convoked or confined to mere advisory functions. The Netherlands and England, however, maintained representative government. In the Stuart period the English Parliament vindicated its sole competence in legislation and taxation. Similar institutions were established in her Colonies in North America.

Democracy  
Vs  
Autocracy

Political theories of Montesquieu, Voltaire and Rousseau of the eighteenth century laid the foundations of the modern doctrine of democracy. The American War of Independence and the French Revolution gave the modern world the first examples of documentary constitutions, thus finding an immediate way of reconciling liberty and authority, the rights of man and established government. The Napoleonic conquests, moreover, spread the ideals of the Revolution.

The two  
great  
Revolutions

The first half of the nineteenth century saw the ideals of liberal reform struggling for recognition and their partial realisation in political forms. The Industrial Revolution enfranchised the middle class and built the groundwork of modern democracy by producing a new class of workers which more and more demanded the recognition of their political rights. Democratic government was established in some form or other in every part of Europe except Russia. It was spread to the British Self-governing Dominions and to places like South America, Japan, and even China.

Effects of  
the Indus-  
trial Revo-  
lution

Lastly, the Great War gave a tremendous incentive to constitutionalism by destroying the illiberal governments which still existed. Out of the dominions of the Czar arose four independent republics of Finland, Esthonia, Latvia and Lithuania. Poland again became a state. Out of the Hapsburg dominions three other states were formed—Czechoslovakia, Yugo-Slavia and Hungary.

Democracy  
in the XXth  
century

All the new states, except Yugo-Slavia and Albania, set up republican constitutions with democratic franchises and parliamentary machinery. Germany and Austria adopted democratic republican constitutions. The spirit of democracy penetrated into the East and Angora and

Democracy  
in the East

Persia became democratic republics. But the current of democracy has been stemmed by the rise of dictatorship in Italy, Germany, Greece, Angora and Persia on the one hand, and by the establishment of the Soviet government in Russia on the other.

## VII. Analysis of Democracy

Herodotus, the father of history, used the word democracy to denote that form of government in which the ruling power of a state is legally vested, not in any particular class or classes, but in the members of the community as a whole. <sup>Meaning of democracy</sup> Twenty-five hundred years afterwards, Lord Bryce, the most competent writer on democracy, has accepted the old definition. He understands by democracy, "a government in which the will of the majority of qualified citizens rule, taking the qualified citizens to constitute the great bulk of the inhabitants, say, roughly, at least three-fourths, so that the physical force of the citizens coincides with their voting power." The ideal of democracy is closely associated with the ideal of liberty. Under a democratic system of government every adult citizen is equally free to express his views and desires upon all subjects in whatever way he wishes and to influence the majority of his fellow citizens to decide according to those views and to implement those desires. But he or she must not use his or her own freedom of thought, speech or action so as to deprive others of a like freedom.

As an ideal, democracy implies that the welfare of all is the end of society and it involves the repudiation of every form of restriction and privilege. Ancient democracy was based on the direct participation of the masses in public affairs. <sup>Character of modern democracy</sup> Modern democracy is representative in character. In the nineteenth century political theorists considered the following institutions necessary for implementing democratic form of government: (1) a written constitution; (2) a declaration of rights implying a limitation of the sphere of government; (3) majority rule, because the right of minority to rule gives all minorities equal right and thereby destroys the integration of society; (4) some kind of separation of powers of government so that each power might check and balance the other, (5) public education to produce the knowledge and spirit appropriate to democratic government. Now-a-days democracy demands not only universal adult suffrage but also the direct participation of the people in government through Mandates, Initiative and Referendum.

The democratic ideal implies a general correspondence between

the acts of the government and the general will of the people.

**The democratic ideal**

Its realisation depends largely on two things—the right of the people to elect and to remove their leaders, and the right to determine the main lines of policy.

A recent writer observes,—“Now it is true that under the cabinet system the electors do, in a broad sense, authorise the government. At a general election, they pass judgment on a ministry, and decide, by their votes, the political completion of its successor. So long, however, as party candidates are selected by irresponsible organisation on non-democratic grounds, it can scarcely be said

**Democracy is a matter of degree**

that the people choose their leaders. Now the representative once chosen is subject to the continuous supervision and control of his constituents. As regards policy, it is not hard to demonstrate how seldom the spontaneous will of the people has been able directly to determine issues of government. We are compelled therefore to return to our conclusion that democracy is a matter of degree, and that no complete expression has yet been given to democratic ideals.”

Democracy is opposed to the interest of a particular individual or class. Usually the interest of all classes and particularly of

**Merits of Democracy**

the poor, who form the majority in the state, is kept in view and promoted by the government. Laski, however, contends that the democracy which was set up in the nineteenth century was nothing but capitalist democracy. The instruments of production are owned by a few and these few persons use the authority of the state to facilitate its access to profit. In his opinion the recognition of trade unions, the right to workmen's compensation, the limitation of hours of labour, regulations seeking safety and sanitation in mines and factories, systems of social insurance and national education were merely the price paid by capitalists to the working class for their co-operation in the overthrow of a social control exercised by a landed aristocracy. But it should be pointed out that the democratic governments imposed a steeply graded income tax, excess profit tax, death duties and estate duties all of which depressed the economic position of the wealthy. Mr. Clark has calculated that the £685 millions paid by the rich in England in 1935 in direct and indirect taxes provided £331 millions which was the entire cost of general administration, £263 millions of services beneficial to the rich and £91 millions worth of services beneficial to the poor only. There can be no doubt about the fact that the provision of social services in the shape of Old Age Pensions, Unemployment and Health Insurance benefits, free education etc., has improved the condition of the poor.

In an oligarchy the rulers are drawn chiefly from a particular

class. But a democratic government enlists the services of the people belonging to different classes in society. Owing to the enlistment of variety of personal energies, <sup>Training of citizens</sup> general prosperity follows

As every one has a share in the government of the country, and as the interest of all is promoted by the government, the feeling of patriotism pervades all sections of the population. Every body is prepared to sacrifice his <sup>Patriotism</sup> individual good for the welfare of the community

Democracy is based on the doctrine of equality of political rights for all. "Inequality," observes De Tocqueville, "has ever been the breeding ground of all revolutions which have changed the face of the world." Popular Governments <sup>Stability</sup> resting as they do on the consent of the governed and upon the principle of equality, are more immune from revolutionary disturbances than those in which the people have no right of participation.

The greatest merit of democracy is that it elevates the character of the citizens. It gives each citizen a sense of responsibility which imparts a new meaning to his personality. "When political institutions," observes Bryce, "call <sup>Better life</sup> upon him to bear a part in their working, he is taken out of the narrow circle of his domestic or occupational activities, admitted to a larger life which opens wider horizons, associated in new ways with his fellows, forced to think of matters which are both his and theirs. Self-government in local and still more in national affairs becomes a stimulant and an education. These influences may be called a by-product of popular government, incidental but precious."

### VIII. A Critical Estimate of Democracy

In the last quarter of the nineteenth century a host of writers levelled attacks against democracy. Of these, Sir Henry Maine and Prof. Lecky are the most famous. The charges which they brought against democracy may be divided into five heads.

Maine has given a summary of all the charges in the following words:—"Democratic governments have been repeatedly overturned by mobs and armies in combination, of all governments they seem least likely to cope successfully with greatest of all irreconcilables, the nationalists; they imply a breaking up of political power into morsels and the giving to each person an infinitesimally small portion; they rest upon universal suffrage, which is natural basis of <sup>Indictment of democracy</sup>

tyranny ; they are unfavourable to intellectual progress and the advance of scientific truth , they lack stability ; and they are governments by the ignorant and unintelligent." Democracy denotes short tenures of office, rotation in office and honorary as distinguished from professional service. These elements do not and can not add to the stability of government. But in every democratic country there is a professional body of administrators, namely the civil service officers. Democracy has proved to be stable in the U. S. A. and England

Two of the most eminent writers of our generation, H. G. Wells and Bernard Shaw have pronounced severe indictments

The Expert  
Argument  
against  
democracy

against democracy on the ground that the task of government requires expert knowledge and the people are not fitted for it. They hold that modern electorates are not capable of coping with the problems of a modern community and the governments they elect must try to retain power by flattering the prejudices of fools. "Our solution," observes Bernard Shaw in the Preface to his *Apple Cart*, "of the political problem is votes for Every body and Every Authority Elected by Vote, an expedient originally devised to prevent rulers from tyrannizing by the very effectual method of preventing them from doing anything .....As the very existence of civilization now depends on the swift and unhampered public execution of enterprises that supersede private enterprise and are not merely profitable but vitally necessary to the whole community, this purely inhibitive check on tyranny has become a stranglehold on genuine democracy." The experts, however, can be employed and consulted under the vigilant supervision of the electorate.

A third charge which has been preferred against democracy is that though it is in name a responsible government, yet it breeds irresponsibility in those who participate in the government. Burke remarked that if a blunder or wrong be committed, the share of each individual in the responsibility or infamy is infinitesimal. Democracy implies team-work, and when anything goes wrong the whole team is blamed and censured. The people has, under the modern group or party system, the remedy of calling another team to conduct the administration. But in monarchy or oligarchy, though the people might definitely know who are to blame, they have got no remedy in their hands excepting revolution.

The critics of democracy further point out that democracy does not really promote the cause of individual liberty. According to these writers democracy means the rule of ignorance and the ignorant people can not take care of liberty. "To place the chief power," says Lecky, "in the most

Lecky's  
criticism

ignorant classes is to place it in the hands of those who naturally care least for political liberty and who are most likely to follow with an absolute devotion some strong leader." During the last days of the Roman Republic and the period of the French Revolutions such a tendency of entrusting supreme power was noticeable in the Roman and the French peoples respectively. But it is absurd to suggest that under absolutism or dictatorship or the rule of oligarchy liberty of the individual is more secure.

Some writers argue that as political equality tends to depress individuality and originality, democracy is not favourable to the development of higher forms of intellectual life. But Bryce vigorously contends against this view. He writes,—  
 "America has now been a democracy for a second and longer period, yet she shows to-day a more vigorous and various intellectual life than was that of sixty years ago. The tyranny of the majority which disheartened Tocqueville in 1830 is not now visible, except at times of unusual strain, when national safety is supposed to be endangered. In France, where democracy is only half a century old, social equality is older, and though both have alienated many men of fastidious taste, there are no signs of dreary monotony or an oppressive intolerance in the realm of thought."

No intolerance or monotony

Efficiency in government is necessary no doubt; but the happiness of the people must not be sacrificed at the altar of efficiency. "It is better," observes Joad, "that imperfect men should live under imperfect laws which are fitted to them which reflect their desires and suit their needs, than that they should seek to discipline themselves to the requirements of legislative perfection.....And just as the foot which confesses to corns, owns carbuncles, and burgesons into callosities cannot without unhappiness to its owner be thrust into a perfectly shaped shoe, so a faulty angular people cannot without unhappiness be thrust into the strait-jacket of perfectly conceived laws." It should be remembered that the diner, and not the cook is the judge of a meal. Democracy means responsible power; the alternative to democracy is irresponsible power, and irresponsible power corrupts even the saintly man. In conclusion we may state that the ideal of government of the people, by the people, for the people may be a myth, but it is a myth which has as much chance of being realized as the ideal of government for the people by the all-wise, unselfish dictators.

Defence of Democracy

## IX. Essential conditions of success of Democracy

The first requisite of the success of democracy is undoubtedly education and a high degree of political consciousness. If the people do not feel interested in the affairs of the

Education



state, nor understand the various problems confronting the society from time to time, democracy becomes a misnomer and useless. Democratic government is charged with inconsistency, improvisation, lack of resolution and corruption in the administration of affairs. All these defects are due to the absence in the community of that alert and instructed interest in public affairs which the success of democratic government presupposes.

The alertness of the people is the essential condition without which the true ideal of democracy can never be realized. Bryce says, in his "Hindrances to good Citizenship," that indolence and indifference on the part of the citizens are the two enemies of democracy. It has been justly said that perpetual vigilance is the price of liberty. In fact, if the people like to have the fullest realization of their rights, they must be alert and active enough to make real their privileges. In the event of their indifference, power passes into the hands of those who are more enterprising and alert.

A large measure of civic responsibility on the part of the people, is also necessary for the success of democracy, for education breeds responsibility and without political education no democracy can endure.

Generally, as unwritten constitutions become more liable to change than written constitutions, it is necessary that for the stability of democratic constitution it should be made written, so that the passing exuberance of the demos may not render the constitution a mere toy in their hands.

The success and stability of a democracy can be assured if its geographical frontiers coincide with the frontiers of a nation. The basis of democracy may be firmly laid only on the foundation of popular satisfaction. It is, therefore, necessary to see that no minority in the state should remain very much discontented.

Last, though not the least of all requisites is the existence of a democratic tradition, based on a democratic organisation or society. In the sixties and seventies of the last century Italy, Germany, Russia and Japan adopted some form of democratic government in imitation of England, U.S.A. and France. But as these four countries had been governed according to autocratic principles for centuries, democracies failed to secure a strong foothold there. It took a long time to build up a tradition of democratic government in France. As most of the essential requisites of success for democracy are lacking in the case of India, it is difficult to say whether it will prove a success here.

## X. Reaction against Democracy

At the beginning of the twentieth century everyone believed in democracy. During the last Great War the allies declared that they were fighting for making the world safe for democracy. But it is curious to note that immediately after the allies had successfully fought the war, nearly three-quarters of the people of Europe found democratic government destroyed or in danger of destruction in their own countries. Not only the Communists and the Fascists are arraigning against democracy, but there is considerable feeling against it even in the professedly democratic countries. Many people do complain that parliamentary government is not working, that Parliament has become a mere "talking-shop", and power has fallen into the hands of bureaucracy. In many European countries, which established parliamentary government more or less on the English model, the system never worked smoothly and even before the rise of dictatorship there was considerable dissatisfaction with the way it worked.

Symptoms  
of dissatis-  
faction with  
democracy

Parliamentary democracy proved inadequate to deal with the emergency which followed the Great War and again the severe depression of 1929-35. There arose in nearly every country a form of dictatorship more or less severe according to the suddenness and intensity of the crisis. In Italy and Spain democracy was replaced by dictatorship in 1923 under Mussolini and Primo de Rivera respectively. As the economic depression grew severe Germany and Austria adopted a form of dictatorship in place of democracy. In Poland all but the faintest shadow of parliamentary rule was lost in October, 1929 when Pilsudski sent a body of soldiers into the lobby of the Chamber to remind the delegates of their limitations. In Yugoslavia King Alexander dismissed Parliament and suspended the constitution; he ruled the country as a dictator largely in Serbian interests and to the great discontent of Croats and Slovenes, until October 1934 when he was murdered at Marseilles. In Rumania King Carol made a similar attempt at royal dictatorship in 1931. Besides these countries, Hungary, Bulgaria, and Turkey are under dictatorship or semi-dictatorships. In Greece General John Metaxas established himself in power by a coup d'etat on August 4, 1936 and proceeded to regiment the life of the country after the example of the Fascist states. In France and Great Britain democratic government stood the strain but only at the price of setting up National or Coalition Governments which meant the virtual elimination of parliamentary opposition.

Failure of  
democracy  
during the  
world crisis

Let us now try to find out the causes of these reactions. The

French Revolution of 1789 extended popular control to the sphere of politics, but it found no way of giving expression to the general will of a community. A false distinction between politics and economics led to the segregation of industry and commerce, banking and mechanism of money from the effective control of the state. Liberal democracy was a hand-maiden to private capitalism. The world economic crisis dealt private capitalism a staggering blow, and the government had to assume control over the economic life as a whole.

Representative government, as it has developed under the *laissez-faire* policy in most countries, is incompatible with a state which accepts responsibility for the economy as a whole. In time of national crisis the weakness of the democratic system is disclosed. When it becomes really important to bring the national economy into balance, to act simply and decisively in the general interest, it transpires that the legislature and executive are trapped in a maze of entrenched privileges. Nobody is found to have the power to govern and in such a condition a sort of planned economy, either through Fascism or Communism, is adopted. There are persons, even in professedly democratic countries, who consider that the maintenance of an economic system which depends for its continuance upon the motive of private profit, is even more vital than the preservation of liberty. Such persons apprehend that a true democracy would abandon such an economic system in favour of one based upon the principle of production for use rather than profit and so they are prepared to sacrifice liberty and democracy to the continuance of capitalism. It must be repeated again that the democratic system has been able to maintain itself intact only in those countries where the crisis, economic or political has been less severe.

## XI. Fascism and Communism as antitheses to Democracy

Fascism and Communism are the two systems of political philosophy which are inimical to the liberal democracy of the present day. Mussolini states plainly that Fascism has combated Pacifism, Marxian Socialism and Liberal Democracy. In his essay on Fascism, contributed to the *Encyclopedia Italiana*, he writes about democracy: "Fascism denies that the majority, by the simple fact that it is a majority, can direct human society; it denies that numbers alone can govern by means of a periodical consultation, and it affirms the immutable, beneficial, and fruitful inequality of mankind." Thus the two cardinal features of democracy, equality and majority rule are denied in Fascism.

The Fascist scheme of representation is entirely different from the principle of representation obtaining in democratic countries. In Italy the employers and employees are organised into a series of twenty-two 'corporations', from which deputies to the lower chamber are chosen. Representation is occupational and not territorial; that is to say, a deputy represents, say, the hotel business instead of the province of Tourin. The deputies, moreover, are 'voted' into the chamber from an approved list chosen by the Grand Fascist Council; electors are privileged simply to say 'yes' or 'no' to the whole list.

Representation under Fascism

The Soviet Constitution which existed from 1923 to 1937 had several features which might be characterised as anti-democratic. First, voting was by show of hands, and not by ballot. The result was that people could not vote as they liked lest they incurred the displeasure of the Communist Party, which runs the political machinery. Secondly, there was vast disparity between the representation of the artisans of urban area and that of the peasants of rural area. The former used to send one delegate for every twenty-five thousand voters, while the latter were entitled to send one for every one hundred and twentyfive thousand voters. Such an arrangement is against the principle of equality. Thirdly, election was indirect instead of being direct. Lastly, the ruling directorate was small enough to run a terrible risk of losing touch with the country as a whole.

Anti-democratic features of the communist organisation

The Soviets have survived twenty-two terrible years. Despite civil wars and two major famines, the population has increased by twenty-three million since 1918, and is now increasing at the rate of almost three million per year. The purely revolutionary phase of Soviet activity has been slowing down. As the new regime has attained stability, it is trying to introduce democracy of the Western type. The new constitution of 1937 aims at removing all the four defects pointed out above. But as the Communist Party will still remain the only political party in the country, it is to be seen how far political liberty will find scope of flourishing in the U. S. S. R. The adoption of the new constitution, however, must be reckoned as a triumph of Parliamentary government.

The new Soviet constitution

## XII. Comparision and contrast between Communism and Fascism

Both Communism and Fascism have subordinated the aim of individual development to the aim of community development.

It must be admitted that the professedly democratic states too have abolished the accepted principles of Nineteenth Century capitalism in recent years. A highly militarized form of planned and regimented state socialism has been set up all over the western world by fixing prices, rationing supplies, allocating capital, directing production and confiscating excess profits.

Individual  
subordi-  
nated

Fascism and Communism alike have forbidden the open discussion of political principles, and have made one single party the repository of political power. But here the points of similarity between the two systems end. In their aims and methods they are fundamentally antagonistic to each other.

Freedom of  
discussion  
forbidden

The Fascists think economic inequality to be natural and necessary; the Communists consider it unnatural and unnecessary.

To Fascists the state is an end in itself, to Communists it is merely a means of purging society of class inequality. "The state," declared Mussolini, "is the embodiment of the Fascist ideal." According to Lenin "the State is simply the weapon with which the proletariat wages its class war."

Economic  
equality

The Fascist government holds in theory a balance between capital and labour. No employer can discharge labour without Government consent. Wages are determined by the government and labour can be hired only at labour exchanges. The government controls the entrepreneur's source of credit and takes a large share of his income by way of taxation. But the workers of Italy have lost their right to bargain, and to strike, their trade unions have been dissolved, and their wages have been mercilessly deflated by decree. The capitalist, on the other hand, maintains his fundamental privilege, namely that of earning private profits. At the cost of some restrictions and control by the state, the capitalists have got full security against the demands of labour +

Capital  
under  
Fascism

In the Soviet economy, on the other hand, private profits have been abolished altogether. Stalin in his "Leninism" claims that

"the power of the capitalist class has been overthrown and has been replaced by the power of the working class. The development of production is subordinated

Capitalism  
destroyed in  
U. S. S. R

"It would be a mistake, however, to suppose that Fascism and Nazism are anxious to save or restore capitalism. The distinguishing feature of capitalism is the allocation of the factors of production in accordance with the profit index. But the Governments of Germany and Italy have ignored this index. They have taxed the capitalists heavily and have set up strict control over private investment to provide money to those industries which they want to encourage. It is forbidden to pay a dividend of more than 6 per cent. Pressure is also put on employers to employ more labour or to refrain from dismissing workmen regardless of the needs of the business.

not to the principle of competition and the safeguarding of capitalist profit, but to the principle of planned guidance and systematic improvement of the material and cultural level of the toilers.

In social policy too the two creeds differ very much. The Fascists and the Nazis believe in the purity of the race, while the Communists not only tolerate the different races but also welcome race distinction. The Fascists believe in the subordination of women to men, and the Communists believe in the full and complete equality of sexes.

In spite of the important ideological differences between the Nazis and the Fascists on the one hand and the Communists on the other a non-aggression pact has been signed between Germany and Russia on the 25th August, 1939. It is difficult to foresee the repercussion of this alliance on the aims and objects of the Nazis and the Communists.

## CHAPTER X

### THE FEDERAL GOVERNMENT

#### I. Nature of the Federal Government

"A federal constitution attempts to reconcile the apparently irreconcilable claims of national sovereignty and state sovereignty."

Reconciliation  
between  
the ideals of  
union and  
independence

Geographical situation, political and commercial interests or a sense of nationality might make it desirable to form a union of a number of existing states. But these states might be unwilling to sacrifice their individual life and political susceptibilities. In such a case where there is a general desire among a number of states to form a larger union, and at the same time to retain their political separateness, the only solution is to form a federation. The existing states form a new state by the union, and surrender their sovereignty to it. But each of them retains its own government with constitutional rights over certain affairs. The federal state becomes a whole, made up of parts, with a clear and precise as well as balanced and stable constitutional division of governmental functions between the government of the whole and the government of the parts. The parts need not be approximately equal in area, population or political power. At the time of the formation of the American federation the states of New Jersey, Delaware and Connecticut were very much inferior to the states like New York and Philadelphia. The cantons of Bern and Zurich are much more important than the forest cantons of Switzerland. But this inequality does not prevent the component parts in a federation from acquiring a status of political equality. All the members of the federation are of equal importance in the federation. The historian Freeman said, "the name federal

Federation  
is much  
more than  
mere  
alliance

government may be applied to any union of component members where the degree of union between the members surpasses that of mere alliance, however intimate, and where the degree of independence possessed by each member surpasses anything which can fairly come under the head of mere municipal freedom." A federal Commonwealth," continued Mr. Freeman, "in its perfect form is one which forms a single state in its relation to other nations, but which consists of many states with regard to its internal government." "It represents," as Garner has put it, "a combination of both unitary and federal principle."

A federation requires a balanced and stable constitutional division of governmental functions between the government of the whole and the government of the parts. Such a

clear-cut division can be achieved only by a written constitution. In the absence of a written arrangement the danger of friction and conflict between the governments of the parts and the government of the whole becomes obvious. It becomes also difficult to maintain the balance of power which is characteristic of a federal state. The constitution is the very basis of the federal state and expresses the supreme will of the parties forming it. As such it must be a written one.

A written constitution is essential

John Stuart Mill clearly brings out the essential nature of federal government in the following words —“Under the more perfect mode of federation, where every citizen of each particular state owes obedience to two governments—that of his own state, and that of the federation—it is evidently necessary not only that the constitutional limits of the authority of each should be precisely and clearly defined, but that the power to decide between them in any case of dispute should not reside in either of the governments or in any functionary subject to it, but in an umpire independent of both. There must be a supreme court of justice and a system of subordinate courts in every state of the union, before whom such questions shall be carried, and whose judgment on them, in the last stage of appeal shall be final. Every state of the union, and the federal government itself, as well as every functionary of each must be liable to be sued in those courts for exceeding their powers or for non-performance of their federal duties, and must in general be obliged to employ those courts as the instrument for enforcing their federal rights.” To sum up the essential elements of federalism are (1) the supremacy of the constitution ; (2) citizenship in the state as well as in the federal union , (3) the demarcation of powers between the component parts and the whole of the federal union; and (4) the existence of a supreme court to decide disputes.

Need of an impartial court

Essential requisites of a Federation

## II. Essential Conditions of Federation

The first requisite for the formation of a federal union is that the states desiring federation must be situated near one another. If they are separated from one another by wide oceans or high mountains, they can not undertake common defence, nor can they develop a sense of national unity. The scheme of Imperial federation within the British empire failed mainly because the Dominions are widely separated from one another.

Contiguity

Geographical contiguity develops a sentiment of common interests. The need of defence has proved the main cause of the rise of federation. “Where there are adjacent communities,



anxious to preserve a real independence, but afraid of proving too weak in isolation to hold their own with powerful states in their neighbourhood, a federal union is an obvious recourse." This is the reason why the Achaean League in Greece was formed. In 1291 the peasants of Uri, Schwyz, and Unterwalden were banded together in a defensive alliance against the oppression of bailiffs. This alliance later on developed into the Swiss federation. The thirteen English colonies in North America formed the United States to maintain their independence against England.

Need of  
common  
defence

Another factor promoting federal union is the realisation of common economic interests. In medieval Europe the League of the 'Hansa' towns as well as the league of the cities of the Rhine were formed to maintain their commercial interests.

Common  
economic  
interests

A sentiment of unity arising out of community of language, culture and interests also gives birth to federation. This is seen in the federations of colonies in Canada, Australia and South Africa

### III. Federation contrasted with complete Union and Confederation

Federation strikes a *via media* between complete union and confederation. Unlike a confederation, a federal union is not a mere league of independent states, but it is a union resulting from the merger of a number of political communities for regulation of various matters common to all the component members. Prof. Garner observes that, "It is a sort of composite state, not a band of states connected together by international agreement."

It is more  
comprehen-  
sive than a  
confeder-  
ation

A Confederation is much looser in organization than a federation. A Confederation is a mere league of states, which does not create a single state. A federation is a union of people over whom the newly created federal authority exercises a certain amount of direct authority. In a Confederation there is really no central power. The Confederated states simply agree to take certain measures in common. The will of the Confederation is but the sum-total of the wills of the component states and is expressed, not in statutes framed by a legislative body, but in ordinances or resolutions framed by a quasi-diplomatic body like a congress or conference consisting of delegates representing the government of the several states composing the confederation.

A league of  
states is not  
a single  
state

Unlike a federal union, a confederation does not possess a single sovereignty, but there is a plurality of sovereignties as many in

fact as there are states composing it. The component parts of a federal union are not really states because they surrender their sovereignty to the federation itself. In common parlance these parts are called states, but they have got none of the characteristics of a state.

There is no single sovereignty in a Confederation

The members of a confederation can, from a legal point of view, withdraw from the confederacy whenever they please. If they had not that power, their sovereignty would have disappeared. But a federal union becomes legally indissoluble so far as the action of the separate state governments, or of the central government, is concerned. The act by which a federal union is established is not a mere compact, but a constitution.

A confederation may be dissolved

German writers call a confederation 'Staatenbund' and a federal state 'Bundes-Staat'. History shows that the confederation and federation represent but two stages in the development of federality. The confederations of the United States and of Switzerland developed into the closer union of federations in course of time. The Achaean League, the German Confederation (1815-70) and the Southern Confederacy (1861-64) are the other examples of the confederation.

Confederation is a stage of federation

#### IV. History of Federalism

A loose kind of federation prevailed in ancient India among the Sakya and the Lichchavi tribes. Similarly, there was a federation of the sub-tribes or cantons in the tribal constitutions of Greece and Germany in early times. Such a federation also existed among the Achaeans, Aetolians, Phocians, Acarnanians, Epirots and Boeotians. These were all backward tribes in Greece. It was only after the death of Alexander that the growing insecurity in the city-states of Greece compelled many of them to join in federations.

Federation in ancient Greece

Freeman gives the following interesting account of the Achaean League. "There was an Achaean nation, with a national assembly in which each of the federated states had one vote, there was a national executive, and also national tribunals to which, as to the assembly, every Achaean citizen owed a direct allegiance. No single city could of its own authority make peace or war or treaties with foreign powers; and it would seem that, by the general law of the League, no single city could receive or send ambassadors without the permission of the central government,—though there are several instances of the violation of this rule in the later times of the league, when unwilling cities had been annexed to it by force. On the other hand, each city determined with perfect independence

The Achaean League

its political constitution and laws, without any interference from the central government. It seems, however, to have been an established principle of the federation that citizens of any one city were admitted to the private rights of citizenship, those of intermarriage and the possession of landed property, in the other cities of the league." This last point is specially to be emphasised in view of the fact that though India is going to have a federation, yet the people of one province have not got all the private rights of citizenship in another province.

The most important of the federations in modern Europe is the Swiss federation "In respect of continuity of development," observes Sidgwick, "the Swiss federation is to the federal type almost what England is to the unitary type." It originated with the alliance of the peasant cantons of Uri, Schwyz and Unterwalden in 1291 A. D. In 1353 it became a league of eight states. It then got rid of the overlordship of the Hapsburgs and became fully independent at the end of the fifteenth century. In 1848 it adopted a new federal constitution on the model of the constitution of the United States of America.

In the middle ages there was another federation, namely the great Hanseatic League of North German cities. In modern times the greatest of the federal states is the United States of America, founded in 1778 A. D.

## V. Principles and methods of distribution of powers in a Federal Government

There are three ways in which federal states may vary from one another. First, as to the manner in which the powers are distributed between the federal union and the federating states, secondly, as to the jurisdiction of the federal court; and thirdly, as to the means of amending the constitution.

The powers may be distributed in two ways between the federal union and the federating states. The constitution may either define the powers of the federal union and leave the remainder to the component units, or it may restrict the powers of these units by specifically stating them and leave the remaining powers to the federal union. If it is desired to strengthen the federating units the former method is followed; if, on the other hand, centralisation is aimed at, the latter method is adhered to. In the case of the U. S. A. and Australia, the remaining powers or the 'reserve of powers' as they are called are left to the states; while in the case of the Dominion of Canada, the central government has got the "reserve

of powers" The component parts of the union in Canada are so weak in power that they are called provinces, and not states. The federal state whose constitution defines the powers of the federal authority is less centralised, while that whose constitution defines the powers of the federating units is less federal.

Whatever might be the scheme of distribution of powers, the central or federal authority must possess three groups of powers, which are essential to unity and uniformity

The first of these groups refer to the military defence and foreign affairs. One of the prime motives for the formation of a federation being military strength, it is absolutely necessary that the federal government should control the army, the navy and the air forces of the state. It should also conduct the foreign policy, receive and send ambassadors, and possess the power to declare war and conclude treaties. To perform these functions the federal government requires money. So it should have the right of taxing the citizens of the federation. The second group refers to powers which are only effective when uniformity is maintained. Such are the powers of controlling coinage, regulating patents and copyrights and conducting the postal service. The third group consists of those powers which are largely contributory to national progress, and can not be left in the hands of different states or provinces. Powers of this nature are the control of extensive transportation facilities like railroads, canals, telegraphs, etc., regulation of banking system, and the establishment of a general tariff. There is no unanimity regarding the distribution of other powers amongst the different types of federal union

Defence and foreign policy must remain with the Federal Government

The second way in which federal states may vary from one another is the limit to the jurisdiction of the Supreme Court.

In the U. S. A. the Supreme Court is virtually the guardian of the constitution and has got the supreme power to decide all cases of conflict between the

Powers of the Supreme Court

federal authority and the state authorities. The Australian Supreme Court has similar powers, but the Commonwealth Parliament has got the right to alter certain clauses of the constitution without any reference to the Court. The Supreme Federal Court in the German Republic has the authority to settle disputes between states and federation or between the states themselves, only in certain cases. In Switzerland, however, the Federal Court has the least power. It is the Federal Assembly, and not the Federal Court which is the final arbiter in all conflicts between states and federal authority. The Swiss Supreme Court can not question the constitutionality of acts passed by the Federal Assembly.

All federal states require, in some form or other the agreement

of either a majority or all of the federating units in amending the constitution. In Switzerland and Australia Referendum decides whether an amendment is necessary or not. In the United States, constitutional amendments may be proposed

Different  
methods of  
amending  
Federal  
Constitu-  
tions

(i) if two-thirds of members of each house of Congress agree to certain amendments, (ii) or if legislatures of two-thirds of the states petition and if the Congress in a Convention agree to consider amendments. When amendments are thus proposed, they are to be agreed to by three-fourths of the states. Thus, the component parts of the U. S. A. have got the greatest amount of controlling power in any change of the constitution.

## VI. The United States of America

In the United States of America the following powers have been given by the Constitution to the Federal Government "The Congress shall have Power to lay and collect Taxes, Duties, Imposts and Excises, to pay the Debts and provide for the Common Defence and General welfare of the United States ; but all Duties, Imposts and Excises shall be uniform throughout the United States ; to borrow money on the credit of the United States, to regulate commerce with foreign Nations, and among the several states, and with the Indian Tribes ; to establish a uniform rule of Naturalisation and uniform Laws on the subject of Bankruptcies throughout the United States ; to coin Money, regulate the value thereof and of foreign coin, and fix the Standard of

Powers of  
the Federal  
Government  
in the  
U. S. A.

Weights and Measures to provide for the punishment of counterfeiting the securities and current coin of the United States ; to establish Post Offices and Post Roads ; to promote the progress of Science and useful Arts by securing for limited times to Authors and Inventors, the exclusive Right to their respective writings and discoveries ; to constitute Tribunals inferior to the Supreme Court, to define and punish piracies and felonies committed on the High seas and offences against the Law of Nations, to declare war, grant Letters of Marque and Reprisal and to make Rules concerning captures on land and water ; to raise and support Armies, but no appropriation of Money to that use shall be for a longer term than two years ; to provide and maintain a Navy ; to make Rules for the government and Regulations of the land and naval Forces ; to provide for calling forth the Militia ; to execute the Laws of the union, suppress insurrection and repel invasions ; to provide for organizing, arming and disciplining the Militia, and for governing such part of them as may be employed in the service of the United States, reserving to the states respectively the appointment of officers, and the authority of training the Militia accord-

ing to the discipline prescribed by congress ; to exercise exclusive Legislation in all cases whatsoever, over such district (not exceeding ten miles square as may, by cession of particular states, and the acceptance of congress, become the seat of the government of the United States) and to exercise like authority over all places purchased by the consent of the legislature of the state in which the same shall be, for the erection of forts, magazines, arsenals, dockyards, and other needful buildings ; and to make all laws which shall be necessary and proper for carrying into execution the foregoing powers, and all other powers vested by the constitution in the government of the United States, or in any department or officer thereof."

The constitution also adds a list of powers forbidden to the federal government and a list of powers forbidden to the states. But the 10th Amendment clearly states that "The powers not delegated to the United States by the constitution, nor prohibited by it to the states, are reserved to the states respectively or to the people." So the component parts of the federal union in the United States have got a large number of powers.

Theoretically the states possess the residuary powers

## VII. The Swiss Confederation

Like the states in the United States the cantons in the Swiss federation hold the reserve of powers. Article 3 of the Swiss Constitution lays down that "the cantons are sovereign in so far as their sovereignty is not limited by the Federal constitution, and, this being the case, exercise all rights not delegated to the federal power." But the cantonal constitutions are made dependent upon a guarantee of the federal power in Switzerland "In proportion as the cantonal constitutions depend upon the federal authority rather than upon the constitution itself, interpreted by a supreme court of judges as in the United States of America, the state as a whole is less federalised." The second point of difference between the American and the Swiss federations is that in the latter referendum is in vogue. Thirdly, each canton can choose its representatives to the upper house of the confederation, called the Council of States, while all the states in America must follow one uniform method for the popular election of senators. Fourthly, unlike the Supreme Court, the Swiss Judiciary has no power of interpreting the constitution.

The Swiss cantons also have the residuary powers

Four points of difference between the U.S.A. and the Swiss Federations

## VIII. Contrast between the Federation in Canada and in Australia

Dr. Strong has admirably summed up the points of difference

between the Dominion of Canada and the Commonwealth of Australia, so far as the principle of distribution of powers is concerned, in the following words “(1) The Australian constitution defines the powers of the Federal Authority and leaves the reserve of powers to the states, while the Canadian constitution states the powers of the provinces and leaves the rest to the federal power ; (2) Australia leaves the state governors to be appointed apart from federal interference, whereas Canada gives the appointment of them to the Ministry of the Dominion ; (3) in Australia the Commonwealth government has no right to interfere with state legislation, while in Canada the Dominion government has a veto on provincial states ; (4) Australia has a Supreme Court which may interpret the constitution, whereas the supreme court in Canada has such power only in a very slight degree ; (5) the Australian senate is elected in equal numbers from the states, while members of the Canadian senate are nominated for life by the Dominion government In general, then, the Commonwealth of Australia is far more federal than the Dominion of Canada, or, to put it the other way, Canada approaches much nearer to the type of state called Unitary than does Australia.”

Points of  
difference  
between the  
Canadian  
and the  
Australian  
Federations

## IX. Strength and Weakness of Federal Government

Federal government is remarkable for the admirable reconciliation it makes between unity and diversity. It combines the advantages of national unity with those of local autonomy and the right of self-government. “It furnishes the means of maintaining an equilibrium between the centrifugal and centripetal forces in a State of widely different tendencies ” It is the only political system which makes it possible to have uniformity of legislation, policy and administration throughout the country where uniformity is desirable and at the same time makes possible diversity where diversity is desirable Under this system such experiments in government and legislation may be tried out as would not be possible in a State having a Unitary system.

Chief merit  
of Federal  
Government

It is particularly adapted to the states of vast area and diversity of conditions and as well as to small states whose populations are separated by geographical, racial or other barriers

It suits big  
as well as  
small states

Lord Bryce has pointed out that under the federal government there is less danger from the rise of a despotic centralised government, usurping the rights of the people. But the federal government suffers from certain elements of weakness.

Liberty is  
more  
assured

Leacock has recently said.—“Federal government has very decided limitations, serious faults of structure, unheeded perhaps at the time of its inception, but likely to break down under the altering strain of a new environment. Politically and on its external side it has proved itself strong, but economically and in its internal aspect it is proving itself weak.”

Economically weak

In the conduct of foreign affairs, Federal government possesses an inherent weakness not found in Unitary government. as is shown by the experience of the United States of America in the ‘Lend and Lease Bill’ of February 1941.

Weak in foreign policy

It means division of power between co-ordinate authorities in legislation and administration which means weakness, whatever may be the other advantages which it secures. It may mean sometimes diversity of legislation in respect of matters concerning which the general interest of a country requires uniformity of legislation

It brings diversity where uniformity is desirable

Among other weaknesses of the federal system may be mentioned its complexity, the danger of conflict of jurisdiction between the national and State authorities, the duplication of governmental machinery and services which it involves and the consequent increased expenses for operating it

It is expensive

Critics of Federal government point out that it suffers also from (a) weakness arising from double system of government, (b) weakness arising from the fear of secession, (c) weakness arising from the fear of combination of states. These fears were real indeed in the last century. Secession of states and combination of states threatened to destroy the Swiss Confederation and the United States. But in both the cases the federal principle triumphed over the centrifugal tendencies.

Secession does not seem possible

Economically, too, the Federal government has many advantages. If each state maintains its own paraphernalia of government, the cost of administration necessarily becomes higher than what it might have been if several states unite for certain common purposes.

Its advantages outweigh its disadvantages

“Not only is there a saving in expenses of management, but there is also the saving that arises from the abolition of ruinous tariff wars, and the organization of free inter-state communication.” Moreover, federation offers a solution to the problem of international jealousy and warfare. The greatest thinkers of the age are making a serious effort to create a mentality favourable to the formation of a United States of Europe. Sidgwick concluded his “Development of European Polity” by observing, “when we turn our gaze from the past to the future, an extension of

Future of humanity lies with the Federation



federalism seems to me the most probable of the political prophecies relative to the form of government."

## X. Modern Tendencies in Federalism

The modern tendency in federal states is to strengthen the power of the central government at the expense of the component parts. This is done by taking recourse to two principles known as the 'Doctrine of Concurrent Jurisdiction' and the "Doctrine of Implied powers." The doctrine of Concurrent Jurisdiction implies that both the central and the state governments are entitled to act in certain spheres. The local or state governments are allowed to act where the federal government has not done so, provided that the acts of the former are not inconsistent with federal laws. In this way the central government is able to expand its authority as national development requires, without violating the constitution. Such a Concurrent Jurisdiction is provided in the constitutions of the German Republic and the Australian Commonwealth. According to the doctrine of "implied powers" the Supreme Court of America interprets the constitution in such a way that the central government gets much new authority. "The brevity of the constitution," says Gettel, "making an elastic interpretation possible, and the political ability of the American people have enabled a constitution, framed at a time when local differences prevented large grants of federal power, to adopt itself to the growing spirit of national unity and to the changed conditions of modern life."

Doctrines of  
Concurrent  
Jurisdiction  
and of  
Implied  
powers

## XI. Personal Union and Real Union

A Personal Union comes into existence when the same person, as king or chief of the state, comes to rule over two or more states by virtue of the laws of succession or by treaty arrangement or by election and the like. Under a Personal Union each of the associated states is entirely independent of the other, each has its own constitution and laws, its own distinct political organisation and its own citizenship and local institutions. Only one person, the sovereign, possesses two distinct legal personalities and may enjoy widely different powers and attributes in the different states composing the union. As examples of Personal Union, may be mentioned, the union between Spain and the old German Empire under Charles V, 1520—1556, union between Scotland and England, 1603—1707, between Great Britain and Hanover from 1714 to 1837.

Personal  
Union is the  
loosest kind  
of union

Real Union occurs, says Hall, when states are indissolubly

combined under the same monarch, their identity being merged in that of a common state for external purposes, though each may retain distinct internal laws and institutions. A Real Union differs from a Personal Union in that the associated states or component members are organically united by constitutional bonds and have common organs of Government but each retaining its own independence and sovereignty. As an example of a Real Union, the case of Austria and Hungary, 1867-1919, may be mentioned. The union between the kingdoms of Norway and Sweden from 1815 to 1905 is also an example.

A Real Union means organic unity

## XII. Imperial Federation

The idea of federalism led from time to time many political thinkers in Great Britain to consider the possibility of an Imperial Federation in the British Empire on the lines of the old German Imperial Federation. It has been felt that if the colonies, dependencies and dominions constituting the Empire could be brought into the frame-work of a federal constitution, the interests of the whole Empire through political and economic co-operation might be furthered. At present the King-in-parliament is the sovereign head of the Empire, and the different colonies and dependencies, barring the Dominions, are governed through agencies appointed by this Sovereign. The Dominions enjoy autonomy, but none of them is represented in the Legislature of the Empire, namely the British Parliament. Lest this non-representation of the different parts of the Empire in the British Parliament create much dissatisfaction and ultimately lead to the disruption of the Empire with the growing political consciousness of the Empire units, it has been suggested that the evolution of an Imperial Federation may remove that danger. In such a system, the different parts of the Empire will have a large measure of local autonomy in the administration of internal affairs, while the central government will control and administer the general interests of the Empire.

Origin of the idea

Utility of such a Federation

### Arguments for Imperial Federation

Thus there are certain considerations and also certain circumstances which are favourable to the idea of an Imperial Federation. Firstly, a federation is likely to ensure the integrity and stability of the Empire. Secondly, in a world where conflicting political forces are at work, the political unity in the British Empire will be a safeguard against foreign invasion, for it will be easier for the Imperial Federation to organize a

Solidarity of the Empire will be assured

common defence Thirdly, the interests of the different parts of the Empire have been closely identified with the British Government The Imperial conferences which meet from time to time have not only conduced to the Imperial solidarity politically, but has also promoted economic relations between the United Kingdom and the rest of the Empire. The Imperial Conference which was held at Ottawa in 1932 gave rise to a series of bilateral trade agreements between the United Kingdom on the one hand and the Dominions and India individually on the other

All these show that the idea of closer political and economic co-operation within the Empire is sought after by all parts of the Empire

But at the same time there are very many difficulties in the way of an Imperial Federation. The materialization of a scheme of Imperial Federation is almost impossible, for there is no geographical contiguity between the different parts of the Empire which is far flung over the world and the different colonies are of unequal size, populated by different races of diversified religions, languages and cultures—all of which show that a true federal spirit among the members of the Empire is lacking. A serious argument against federation is that the different colonies and dependencies are at unequal stages of development both economically and constitutionally. If the form of government in each unit is not approximately uniform, then unity of action will not be possible for the representatives of the units.

The units  
are far off  
from one  
another

The most formidable difficulty is presented by the scheme of representation in the Imperial Legislature. The British Parliament as it is constituted now will have to be so reorganized as to accommodate the representatives of the Empire units. It is extremely unlikely that the conservative Englishmen will agree to accept such a change. The mode of representation of the colonies and dependencies, in view of their different sizes and constitutional advance, will be a knotty problem to solve Besides, an inordinately large size of parliament will make it unmanageable and in consequence its efficiency will suffer.

Difficulty of  
representa-  
tion

England will never be ready to forego her present pre-eminent position and to sacrifice the existing parliament for a subordinate legislature. The autonomous Dominions also will not agree to curtail their liberty in shaping their own administrative policies in order to join an Imperial Federation of dubious utility.

Neither  
England nor  
the Domi-  
nions will  
agree to it

On the whole, an Imperial Federation is impracticable. England will not agree nor the self-governing Dominions will agree to it. The long distances intervening between the different parts of the Empire and the diversified nationalities, races, religions, cultures and languages will render the scheme practically unworkable. Just like a world state, an Imperial Federation is unattainable under the existing world conditions.

*It is impracticable at present*

## CHAPTER XI

### THE LEAGUE OF NATIONS

#### I. Origin of the League

The League of Nations formally came into existence on January 10, 1920, through the coming into force at that date of the Treaty of Versailles. The aims of the League are : (i) to preserve peace and to seek a settlement of international disputes, and (ii) to organise in the most varied spheres the co-operation of peoples with a view to the material and moral welfare of humanity. The members of the League have pledged themselves not to go to war before submitting their disputes with each other or States not members of the League to arbitration or enquiry and a delay of from three to nine months. Any State violating this pledge is automatically in a state of outlawry with the other States, which are bound to sever all economic and political relations with the defaulting member.

The ideal of a League of Nations was not of course a new one. It has been calculated that no less than 222 attempts have been made in the past to organize world-peace. Pierre du Bois in the fourteenth century wished to unite Christendom under the French king. Sully in his "Grand Design" planned a redistribution of European countries into fifteen states carved out of various kingdoms, each of which would be ready to furnish a quota for collective action under the control of a General Council. Kant in his "Perpetual Peace" (1795) laid down a scheme for removing the conditions which lead to war.

The next stage in the development of International peace was reached when the conception of inter-state organization was taken up by the statesmen of Europe in the nineteenth century. Czar Alexander I inaugurated the Holy Alliance and Metternich formed the Concert of Europe. Both these organizations failed to achieve anything substantial. In 1856, the Congress of Paris laid down certain rules for avoiding international conflicts. Eminent men like John Bright, John Stuart Mill, Victor Hugo, Garibaldi and Michael Bakunin formed an association, called the League of Peace in 1867 with the object of maintaining "liberty, justice and peace" and establishing a United States of Europe.

In 1898, the Russian government proposed a conference to discuss the restriction of armaments and this was held in 1899.

Twenty-six states were represented in it. The conference led to the foundation of the Permanent Court of Arbitration to prevent war. Nothing however could be done to restrict armaments. In 1907, a second conference was held at the Hague, where forty-four states met together. The Convention, which resulted, established the mediation of a third party as a method of ending war.

The Hague  
Convention

This history of international conferences shows that the League organization differs from those conferences in three fundamental aspects. First, President Wilson's ideal of the League included not only Christian or European nations, but also non-Christians and non-European nations, and the vanquished as well as victors and neutrals. Such an all-embracing scheme has never been formulated before.

The League  
is more  
comprehen-  
sive than the  
conferences

Secondly, statesmen have seldom, prior to the formation of the League, supported an organization for world-peace, although they professed as much fondness for peace as philosophers like Kant did. The causes that led them to do so at Versailles were partly idealistic and partly selfish. They had suffered from the shocks of the worst of world wars and were, therefore, anxious to stop the recurrence of such an event. But at the same time they thought that with France, Britain, and the U. S. A. all on one side, they would be able to keep the vanquished nations in subjection and retain their conquests.

The States-  
men sup-  
ported it for  
two reasons

Thirdly, none of the international conferences or concerts had reached the point of having a permanent headquarters and secretariat, which give special value to the present League.

Permanent  
organisation  
of the  
League

## II. Constitution of the League of Nations

The character of the League has been fully explained by Sir Samuel Hoare in a speech at Geneva in September, 1935. He said that the League "is not a super-state, nor even a separate entity existing of itself independent of or transcending the states which make up its membership. The member-states have not abandoned the sovereignty that resides in each of them, nor does the Covenant require that they should, without their consent in any matter touching their sovereignty, accept decisions of other members of the League. Members of the League by the fact of their membership are bound by the obligations that they themselves have assumed in the Covenant, by nothing more." The League was thus like a

Character of  
the League

The mem-  
ber-states retain  
their sove-  
reignty

club, where discussions on matters of international interest were held regularly. But it had no power of coercion

At the time of the first Assembly of the League in 1920, there were forty-two member-states. The Central Powers were not admitted for some years. Hungary was admitted in 1922 and at the Locarno Conference in 1925 it was agreed that Germany should seek admission to the League. Russia was not allowed to become a member before 1934. The United States of America did not join the League because the Congress thought that the Article X of the League Covenant might involve America in non-American wars in future. Japan announced her intention to withdraw from the League on March 27, 1933, after having flouted successfully her obligations under the Covenant in her dispute with China. Germany resigned from the League on October 21, 1933 with a view to proceed with rearmament free of all restraint. Italy practically ceased to be a member, when in October, 1935 the Sanctions were applied against her.

The Covenant is the Charter or Constitution of the League. The League operates through an Assembly, a Council and a permanent Secretariat, which may be compared respectively to the Legislature, the Cabinet and the Civil Service of a state. Besides these, there is the Permanent Court of International Justice. The Assembly consists of representatives of all member-states. It generally meets once a year in September, and it deals with any matter within the sphere of action of the League. It works normally through six committees dealing mainly with constitutional, legal, financial, social and political questions.

The council is composed of four permanent members who are representatives of such great Powers as are within the League, together with ten non-permanent members who are representatives of the smaller Powers and are elected for periods of three years. It meets normally three or four times a year and as often as an emergency would require. It deals specially with infringements of territorial integrity and political independence of members, with the reduction of armaments and with military matters in general, with the investigation of disputes between members, with the execution of arbitral awards, with recommendations regarding the military support of sanctions, and with the exclusion of members for violation of the Covenant. Decisions of the council as well as of the Assembly must be unanimous, except in cases provided for in the Covenant.

The Permanent Secretariat comprises 637 men and women of 44 nationalities, all appointed by the Secretary-General

with the approval of the Council. The officials of the Secretariat are exclusively international officials and they can not seek or receive instructions from any Government or other authority outside the Secretariat. The Secretary-General, Avenol, is a Frenchman. The Secretariat consists of the offices of the Secretary-General, the Deputy Secretaries-General, and Under-Secretaries-General, fourteen sections, various administrative services, auxiliary offices in different countries, and a Library. Members of the League contribute to its expenses by a scale of allocation, according to which out of the total of 1011 units the U. K. contributes 105 units, France 79, India 55 and China 46 units.

The Secretariat

Contribution of members

### III. The Permanent Court of International Justice

The Permanent Court of International Justice, which was established in accordance with Article 14 of the Covenant, has its seat at the Peace Palace at the Hague. The Court consists of fifteen Judges, who are elected by the Council and Assembly for nine years. Sir Cecil Hurst of the U. K. is the President of the Court.

The Hague Court

The Court deals with disputes of international nature submitted to it by the states concerned; and it may also give advisory opinions on any question submitted to it by the Council. In the performance of its judicial duties, the court applies international conventions, together with the rules of law which it deduces from international custom from the general principles of law recognised by civilised nations and, from the judicial decisions and the teachings of eminent publicists.

Functions of the Court

In contentious matters, the Court's jurisdiction is always conditional upon the consent of the parties. Such jurisdiction is said to be compulsory when the parties' consent has been given once for all in a treaty or convention relating either to all or to certain categories of disputes. The court's advisory opinions, given to the Assembly or Council at their request, do not possess the force of Judicial decisions.

An advisory body

### IV. Arrangement for Settlement of International Disputes

The Covenant of the League contains two kinds of provisions concerning the pacific settlement of disputes. The first, Article 11, makes it the business of the League to take prompt steps to safeguard peace in the event of war, or threat of war or of any matters likely to disturb international relations.

Measures to safeguard peace



On the other hand, the provisions of the second class are mainly designed for the purpose of seeking or finding a solution of disputes between States which are likely to lead to a rupture. The members are required to submit any dispute among them, which are liable to lead to rupture, either to arbitration, to judicial settlement or to inquiry by the Council. They shall not resort to war until three months after the award of the courts or the report of the Council shall have been issued.

Solving disputed questions

Article 17 allows non-members, in dispute with members, to accept the obligations and privileges of membership for the settlement of the dispute. Disputes as to the interpretation of a treaty, as to any question of international law, as to the existence of any fact which, if established would constitute a breach of any international obligation, or as to the extent and nature of the reparation to be made for any, such breach, are declared by the Covenant (Art. 13) to be among those which are generally suitable for submission to arbitration or judicial settlement. Lastly, the prevention of war is sought by the deterrent effect of the threat of Sanctions and expulsion from the League (Art. 16).

Threats of sanctions and expulsion

Besides settling minor affairs, the League has settled thirteen political disputes during twenty-two years of its existence. Of these the Graeco-Bulgarian dispute of 1924 and the Graeco-Italian incident of 1923 were the most important. When Greece and Bulgaria were thinking of taking recourse to war over a quarrel regarding the Demir Kapu frontier incident, the Council of the League reminded both the Governments of their obligations under the Covenant and invited them to withdraw their troops to their respective frontiers within sixty hours. The two Governments conformed, an enquiry was made, and, on the basis of the recommendation resulting therefrom, the matter was settled. In 1923 occurred the bombardment of Corfu (under Greece) by Italy. The matter was discussed by the Council, but it was actually settled by the Conference of Ambassadors. Besides these two most important disputes, the League handled with skill and discretion the difficult situation that arose between Yugoslavia and Hungary out of the murder of King Alexander.

Achievements of the League

Three great disputes were settled

## V. Failure of the League to prevent war and its causes

The League has succeeded in settling political disputes

between second and third-rate powers. But when a first-rate power like Japan, Italy or Germany was bent on aggrandisement, the League met with colossal failure.

*The League is powerless against big States*

In 1932 the League gave the most shocking demonstration of its weakness in the Manchurian affair. Japan occupied Manchuria in September, 1931 and the League sent a Commission headed by Lord Lytton to report on the situation in the Far East. The Commission reported that Japan's occupation of Manchuria was not justified by reasons of self-defence and recommended that the Powers should not recognise Manchukuo. Japan meanwhile conquered Jehol and brought Inner Mongolia under the Manchukuan rule. The League adopted the Lytton report in February, 1933 and Japan's reply was to give notice of withdrawal from the League.

*The Manchurian affair*

The next colossal failure of the League was in the case of Italy's annexation of Abyssinia, which was and is a member of the League. The League invoked article 16 of the Covenant on October 6, 1935 and the Sanctions against Italy were put into motion. For the first time, a major Power was formally condemned by a unanimous vote of the Council and Italy was declared an outlaw state. But the Sanctions failed. On June, 1936 the dispossessed Abyssinian emperor appeared before the Assembly to plead the cause of his country and said pathetically "God and history will remember your judgment."

*The Abyssinian affair*

In the case of the Spanish Civil War, the League decided upon enforcing a policy of non-intervention, though the proper business of the League is to intervene in order to secure and maintain peace. Japan attacked China without declaring any war. There is a major war in the East now, yet the League failed to do anything regarding it. In October, 1938 Germany put an end to the life of one of its members, viz., Czecho-Slovakia and the League failed to take any active step against the aggressor. By September 1938 the totalitarian states had definitely worsted the League. The stages which marked the League's decadence and final destruction were the German re-occupation of the Rhineland and the Italian war on Ethiopia in 1935, the war in Spain, the Sino-Japanese war in 1937, Neville Chamberlain's experimentation in European Settlement outside the framework of the Covenant, Germany's annexation of Austria in 1938, the dismemberment of Czecho-Slovakia and Italy's seizure of Albania in 1939.

*The Spanish Civil War and the Sino-Japanese War*

The League of Nations, so long as it is based on the

retention of complete national sovereignty by its members is subject to five fatal limitations. (1) A league of sovereign nations can never compel universal membership nor proceed by majority decision. (2) It has no power in itself to alter the status quo, and thereby remove some of the main causes of conflict. One writer observed that the League "has become the instrument to perpetuate wrongs, always available to the beneficiaries of such wrongs, but never within the grasp of those who seek to escape." A proposal, therefore, has been made of separating the Covenant from the Peace Treaties, which would remove from the League the onus of its questionable birth and give it a fresh start in life. (3) The League has no power to limit or control economic nationalism, which is the principal cause of unemployment, dictatorship and international tension to-day. (4) It has no power to limit armament. (5) If the League attempts coercion by applying sanctions its members must be ready for war or actually go to war. The most important cause of the collapse of the League was the deliberate design of the totalitarian states—Germany, Italy and Japan—to divide and weaken the peace-forces in the world and thus to open the door to domination of the world. The dictators scorn the independence of states just as they scorn the liberty of individuals. They do not believe in the equality of states. They repudiate any and every form of collective security because it would make them vulnerable.

Five great  
limitations  
of the  
League

## VI. League's efforts to reduce National Armaments

Article 8 of the Covenant defines the obligations of the League and of its members with regard to the reduction and limitation of armaments. It laid down amongst other things that the Council shall formulate plans for reduction of armaments for the consideration and action of the several governments, and that the limits of armaments thus fixed shall not be exceeded without the concurrence of the Council. A Permanent Advisory Committee on disarmament was appointed in 1920 and a Preparatory Commission was set up in 1925 to do the preliminary work for a world conference for the reduction and limitation of armaments. The Preparatory Commission held six sessions and finally dissolved in December 1930 after preparing a draft Convention. Throughout the greater part of 1932, 1933 and 1934 the Disarmament Conference was in session at Geneva under the Presidency of Mr. Arthur Henderson. Sixty-one states, seven of which were not members of the League sent

The first  
effort to  
reduce  
armament  
in 1920

representatives to it. In July, 1932 the Conference took a decision in favour of a substantial reduction of world armaments. Under this decision, all attacks from the air on civilian population and all bombings from the air were to be forbidden, maximum limits were to be set to heavy land artillery and the tonnage of tanks. The chemical, incendiary and bacterical warfares were to be proscribed. Recent events in Abyssinia, Spain and China show, however, that these have been proscribed instead of being proscribed

Recommendation of the Disarmament Conference

The Russians proposed an all-round reduction of armaments by 50 per cent and the U. S. A. by  $33\frac{1}{3}$  per cent. But Britain objected to it. France proposed to put an armed force under the control of the League of Nations, to be used to punish any power whom the League Council—by a majority vote, not necessarily by unanimity—should proclaim an aggressor. This meant in practice that the League force would be used to enforce the Versailles settlement and to maintain the ascendancy of France in Europe. Such a proposal could not be acceptable to the vanquished nations.

The French proposal

In the reduction of naval arms the League attained some measure of success. The Washington Conference of 1921-22 led to an agreement between Great Britain, the U. S. A. and Japan to destroy seventy of their warships in agreed proportion and to build no more for ten years. A Second Conference on naval disarmament met at Geneva in 1927 to discuss a similar limitation on cruisers; but owing to the objection of Great Britain the proposal fell through. In the Third Conference held in 1930 Great Britain accepted the principle of cruiserparity with the United States.

Naval disarmament

The result of the Disarmament Conferences may be illustrated by the case of Great Britain. In February, 1937 Neville Chamberlain announced new defence expenditure of £400,000,000 million to be spent over the next five years, in addition to the £200,000,000 now being annually spent in Britain. It tripled the normal expenditure on defence

Growth of armaments

## VII. The Mandates

The African and Pacific possessions of Germany and certain territories of the Ottoman Empire were put, by Article 22 of the Covenant, under the tutelage of "advanced nations who by reason of their resources, their experience, or their geographical position, can best undertake this responsibility." These nations should act as mandatories

The object of Mandates

of the League, and exercise their powers on behalf of the League. They should act on the principle that the well-being and development of the peoples under their tutelage formed a "sacred trust of civilisation," and should render the Council an annual report on the territory committed to their charge.

The Mandated territories are divided into three classes according to the degree of civilisation of their inhabitants, economic and geographic circumstances and so forth. Thus Palestine and Syria were put under 'A' class and placed in charge of Great Britain and France respectively. Both these territories have acquired independence recently. Class 'B' Mandates including Togoland and Cameroen were attributed in part to Great Britain and in part to France. The former German East Africa, now called Tanganyika Colony is under the British administration. The 'C' class Mandates have been attributed mostly to Australia, New Zealand and the Union of South Africa. Japan has got the former German North Pacific possessions.

The problem of the Mandates has become an acute one in recent years. Germany is demanding back her colonies. It is one of the reasons why Germany is bent upon destroying the Peace Treaties. Five countries in the world, namely Britain, France, Belgium, Holland and Portugal, possess about seventy-five per cent of the total of the world's key products. Germany, Italy and Japan are dissatisfied with their colonial position and this dissatisfaction is one of the most important potential cause of war.

### VIII. Non-political work of the League

The League of Nations was created primarily for preventing the recurrence of war. It has failed to a large extent to achieve this purpose. But its non-political work is a valuable asset to the modern world.

The Health Committee of the League directed its attention to Malaria. In 1932, the Malaria Commission summed up the results of its investigations in a report entitled "The Therapeutics of Malaria". Similar efforts have been instituted with a view to combating tuberculosis, cancer, syphilis, etc. Several international conferences convened under the auspices of the Health Organisation have resulted in the adoption of international standards for certain sera, biological products and the principal vitamins. These are entrusted for safekeeping to an official laboratory.

The League of Nations began its work for the suppression of

the traffic in women and children in 1921. In October, 1933 a new convention was adopted prohibiting the international traffic in women of full age to be employed, even with their consent, for immoral purposes in another country. The Child Welfare Committee has done much to raise the age for marriage. It has improved the position of illegitimate children. The Geneva Agreement of 1925 provides that the retail sale, import, and distribution of prepared opium shall constitute a State monopoly. India government has given up a valuable source of revenue from Opium trade in pursuance of this Agreement.

Welfare of  
women and  
children

The Permanent Committee on Arts and Letters has adopted two methods of work—viz. that of conversations and that of open letters with a view to promoting intellectual co-operation.

Intellectual  
co-operation

### The International Labour Organisation

The International Labour Organisation was constituted by the Treaties of Peace as an autonomous organisation of the League of Nations. It aims at the establishment of social justice and specifically at securing humane conditions of labour. The Organisation consists of the International Labour Conference, which meets at least once a year, and the International Labour Office, controlled by a Governing Body. Both these bodies are composed of representatives of Governments, employers and workers, all nominated by the respective Governments. The decisions of the Conference take the form of Draft Conventions or recommendations to the different Governments, who may make laws to carry out the convention. The Members report annually to the International Labour Office on the measures which they have taken to give effect to Conventions which they have ratified. The functions of the International Labour Office are the preparation of the agenda of the Conference, the collection and distribution of information on all subjects relating to the international adjustment of industrial life and labour, the publication of periodicals and reports dealing with problems of industry and employment and any other duties assigned to it by the Conferences. The founders of the International Labour Office specified in the Charter the following examples of improvements, which they deemed urgently necessary. "The regulation of the hours of work, including the establishment of a maximum working day and week, the regulation of labour supply, the prevention of unemployment, the provision of an adequate living wage, the protection of the worker against sickness, disease and injury arising out of his employment, the protection of children, young persons and women, provision for

Aim of the  
Labour Or-  
ganisation

The Draft  
Conven-  
tions

old age and injury, protection of interests of workers when employed in countries other than their own, recognition of the principle of freedom of association, the organization of vocational and technical education and other measures”

The International Labour Conference has adopted sixty Conventions relating to highly important subjects such as limiting hours of work in industrial undertakings, employment of women during the night, minimum age for admission of children to industrial employment ; workmen's compensation for accidents, creation of minimum wage-fixing-machinery, forced labour, compulsory old age insurance, etc. India has ratified fifteen out of these sixty Conventions. The revision of the Factories Act in 1922 and 1934, the Workmen's Compensation Act of 1923 with two amending Acts passed in 1926 and 1929, the Trade Unions Act of 1926, the Payment of Wages Act of 1936 are the results of ratification of these Conventions. In the western countries, however, the 48 hour week and in France 40 hour week (since Sept 1936) has been attained, whereas in India the hours of work are still 54 per week

Achievements of the  
Labour  
Organisation

## CHAPTER XII

### THE SEPARATION OF POWERS

#### I. Three-fold Divisions of Governmental Functions and Organs

In every modern state there are three well-defined departments of government—legislative, executive and judicial. They are called the three organs of government. They are always intimately connected with one another and yet they are everywhere distinct. There must be in every well-organised community some laws. The organ of government which makes laws is known as the Legislature. The functions of the Legislature increase with the growing complexity of modern society and with its consequent demands upon the law-making authority for social good. There is another body in the state which is entrusted with the function of executing the laws. This body is known as the Executive. The function of the Judiciary is to “decide upon the application of the existing law in individual cases”

The legislative, executive and judicial organs

In primitive states there was no distinction between these three functions. The king was at the same time the head of the executive, the supreme law-giver and the fountain of justice. But as the society became more complex, there arose the need of specialisation of functions. The king began to delegate his different powers to different bodies and the tripartite division resulted. It must be noted that this process does not involve a division of the sovereign power, it is merely a convenient means of coping with the increasing business of the state

Need of specialisation

Aristotle was the first writer to note the distinction between the three functions of government,—which he called the Deliberative, Magisterial and Judicial. But in Athens there was no separation of powers as the Ecclesia or the Assembly exercised not only legislative, but also the executive and judicial functions. Roman writers like Cicero and Polybius praised the Republican constitution of Rome because in it they found a balance between the Senate (legislature), Consuls (executive) and Tribunes (judiciary). But in practice the Senate was the supreme authority to which the other functionaries bowed down. The little distinction that was observed in the Greek and Roman city-states between the three departments of government was obliterated by the establishment of the Roman Empire, the development of feudal institutions in the

Origin of the theory of separation



middle ages, and the rise of national states under absolute monarchs.

Bodin, the French publicist of the sixteenth century, was the first modern writer to demand a separation of powers. He argued that if the king were both law-maker and judge, then a cruel king might give cruel sentences. Bodin and Locke advocated separation of powers. During the Commonwealth period in England, Cromwell separated the executive and legislative functions, though as the head of the executive, he dismissed the judges high-handedly. The Glorious Revolution deprived the English King of the power to suspend and dispense with law. John Locke defended this step by enunciating the theory that the powers of government naturally divided themselves into those which were legislative in character, those which were executive and those which were federative (that is diplomatic). The theory of separation of powers, however, emerged finally from the writings of Montesquieu.

## II. Theory of Separation of Powers

The absolute monarchs of Europe had to maintain different departments of government indeed, but they controlled the executive, the legislative and the judicial departments. Absolutism of monarchs. They held the ministers responsible to themselves, promulgated whatever laws they liked, and appointed and dismissed Judges at their sweet will. In England, however, by a long process of constitutional struggle, Parliament secured the authority of making laws, and the Judges got the right of holding office so long as they behaved well. As the liberty of the subject was greater in England than anywhere else in Europe in the middle of the XVIIIth century, Montesquieu came to believe that concentration of authority meant tyranny, and that only under a wise distribution of powers, safeguarded by checks and balances, was individual liberty possible. Theory of Montesquieu. Montesquieu promulgated this theory in his *Esprit des Lois*, published in 1748.

Stated briefly, the theory of separation of powers means that the legislative, executive and judicial functions should be performed by different bodies of persons. Each body or department should be limited to its own sphere of action and neither body was to have a controlling power over either of the others. The reason for such a separation of powers is thus given by Montesquieu :—"When the legislative and executive powers are united in the same person, or in the same body of magistrates, there can be no liberty. Again, there is no liberty if the judicial power is not separated from the

legislative and executive powers. Were it joined with the legislative power, the life and liberty of the subject would be exposed to arbitrary control, for the Judge would then be the legislator. Were it joined with the executive power, the Judge might behave with violence and oppression. There would be an end of everything, were the same man or the same body, whether of the nobles or of the people, to exercise these three powers, that of enacting the laws, that of executing the public resolutions, and that of trying the cases of individuals."

The theory of Montesquieu received powerful support from Blackstone, who in his Commentaries on the Laws of England (1765) observed. — "Whatever the right of making and enforcing the law is vested in the same man or one and the same body of men, there can be no public liberty."

Blackstone's  
views

### III. Influence of the Theory in America and France

The doctrine of Montesquieu and Blackstone was adopted and put into practice in America. The constitution adopted in Massachusetts in 1780 contained the following — "In the government of this Commonwealth, the legislative department shall never exercise the executive and judicial powers, or either of them; the judicial shall never exercise the legislative and executive powers, or either of them; to the end it may be a government of laws, and not of men." The theory of separation of powers was also accepted as the basic principle of the U. S. A. federal constitution.

The Massa-  
chusetts  
Constitution

The theory gained recognition in France, the land of its birth. The sixteenth Article of the Declaration of Rights declared — "Every society in which the separation of powers is not determined has no constitution." Accordingly, the French Constitution of 1791 made the executive and the legislature independent of each other, and the judges elective.

The French  
Constitu-  
tion of 1791

### IV. Criticism of the Theory

The theory of separation of powers, as interpreted in a narrower sense in the Massachusetts constitution, quoted above is impossible of achievement in practice. In this narrower sense it means the complete isolation of the three departments from one another. But government being an organic whole cannot be divided into water-tight compartments. The division of government into parts and their relative power depends really upon the purpose of government and the relative technical capacity of the various bodies of men who are employed in its realization. France found

Complete  
separation is  
impracti-  
cable

it impossible to work out the constitution of 1791 and after various constitutional experiments, has adopted the cabinet system of government in which the executive is responsible to the legislature. Even in non-parliamentary constitution, the legislature ought to be and is able to secure through its power over the purse some control over the executive. The Judiciary must also interpret the law which the Legislature lays down. The Executive exercises the prerogative of pardon and thus check or undo the harsh decisions of the Judiciary. These examples show the interdependence of the three departments of government.

But in a broader sense—that the three powers shall be in separate hands—all modern constitutional states conform to the ideal of separation of powers. In a non-parliamentary executive the separation obviously exists between the Executive and the Legislature. In parliamentary states, the Executive is only a part of the Legislature and not the whole of it; and as such some kind of separation exists. The Judiciary is independent in the sense that in most of the constitutional states the tenure of the Judges is permanent, that is to say, they hold office while they are ‘of good behaviour.’ On the whole, however, there is more of interdependence between the powers than isolated independence.

But some  
kind of separation  
is maintained

## V. Extent of Application of the Theory in existing Governments

Though in a broader sense the theory of separation of powers is true, yet we do not find complete separation in any government in the world. It is neither desirable nor practicable to separate the three powers of government. It is not desirable to separate the powers because if each department of the government were completely independent in its sphere so that it could thwart the actions of the others, frequent deadlocks would be inevitable. As Mill pointed out, “each department acting in defence of its own powers would never lend its aid to the others, and the consequent loss in efficiency would outweigh all the possible advantages arising from independence.”

The government  
departments are  
interdependent

The theory of separation is not practicable too. The Legislature lays down the broad outlines of a law, but the details must be worked out by the executive department in course of its application. The legislative body in every country allows more and more scope to the executive to make rules under the Act and those rules too have got binding authority. Moreover, in times of emergency the executive authority must be vested with the power of issuing ordinances.

Law is made  
by all the  
three organs

The Judiciary gets a share in legislation through their power to interpret the written law and to declare what is unwritten law. Thus the work of legislation must be divided amongst all the three departments of the state. Madison rightly observed,—“Unless the departments were so far connected and blended as to give to each a constitutional control over the others, the degree of separation which the maxim requires as essential to a free government can never in practice be duly maintained.” The Judiciary performs some executive functions too. The lower courts in the U. S. A. and the Justices of Peace in England are entrusted with the duty of maintaining peace. Moreover, the Legislature serves some judicial functions. The House of Lords in England is the highest court of appeal. Moreover, the Parliament in England, the Congress in the U. S. A. and the Chambers in France are courts of impeachment.

In Parliamentary states, such as England and France, the Executive is dependent on the Legislature. The Legislature discusses the conduct of the executive and performs some executive functions through its committees. Some members of the Legislature are also members of the Executive. The Cabinet is indeed a committee of the majority party in the Legislature. Judges are appointed by the executive and must interpret and abide by the law passed by the Legislature. In France and other continental states there are administrative courts, which are amenable to the control of the Executive, but perform judicial functions. Their existence is, therefore, not in agreement with the theory of separation. But in as much as the courts are intended to protect the administrative officers from ordinary tribunals they are based on the theory of separation of powers.

Administrative Courts

In the U. S. A. the whole constitution was based on the theory of separation of powers. But the following instances show that the theory is not rigidly adhered to there. The Senate controls the appointments made by the President and ratifies treaties. The Congress control the Executive through its power of supplying or withholding grants. The President exercises the veto power on bills passed by the Congress and influences it by his Messages. The emergence of the party system has brought the Executive and the Legislature in closer contact with each other, as the members of the same party may get majority in both the departments.

The theory is not practised even in the U. S. A.

In India theoretically the Executive, Judiciary and Legislature are separated. But the Governor-General, the head of the Central Executive has power to override the decisions of the Legislature by his certifying and vetoing powers. Moreover, the district magistrate is the head of the police as well

In India

as the authority to try certain cases "To be tried by a man who is at once the judge and prosecutor is too glaring an injustice. When the functions of a policeman, a magistrate and a judge are all united in the same officer it is vain to look for justice "

## VI. Division of Powers in Modern Democratic Governments

There are two main divisions in the business of government . to determine that certain things shall be done and to make the people do them. Those bodies which are concerned with determining the things which shall be done are the Electorate, the Political Parties, Parliament, the Cabinet and the Chief of the State. The Cabinet, the Chief of the State, the Civil Service and the Courts of Justice are charged with the duty of causing people to do the things that have been decided upon. These seven main centres of political activity must act in harmony and co-operation to produce orderly form of government. The electorate remains a disorganised mass of men and women without any coherent principle so long as the political parties drill and organise it. The electorate sends representatives to Parliament through elections and the members occasionally come to the constituencies to ascertain the views of their electors. The Legislature is in one sense the conference of political parties. The Cabinet owes its power either to the Legislature or to the Electorate. The Civil Service lends its expert knowledge to the Cabinet in the matter of framing bills and handling discussions. It comes in contact with the electorate through deputations and advisory councils. The Courts of Law interpret law in such a way as to make it conform to the general trend of thought prevailing among the electorate.

Though the power and quality of each of these seven organs of modern government are different from one another and each has its own sphere of activity and influence, yet they are necessarily inter-related. The existence of well-organized parties makes it possible to carry on the government in a disciplined and at the same time democratic way. The party organizes the voters in the hope of securing a majority or at least making a formidable opposition. No party can afford to ignore even a single vote and to secure votes each party must show achievement. The exchange of views in the Legislature, conformation to rules of procedure and personal contacts foster a conciliatory attitude in the members of the different parties and promote party and parliamentary competence.

## CHAPTER XIII

### THE LEGISLATURE

#### I. Functions of Legislature

The functions of a legislature depend on the principle on which it is constructed. Broadly speaking, three systems are in use in the formulation of a legislative policy. An autocratic monarch or a bureaucratic government may keep up a Legislature merely as a consultative body. The Czar of Russia and the Emperor of Austria-Hungary allowed very little legislative power to the Legislatures of their respective empires. The Legislative councils of India were entirely subordinate to the Executive in the nineteenth century. At present, the control of representative assemblies over law-making is increasing in some countries while in others, the will of Dictators like Mussolini and Hitler is becoming the law of the land.

In the parliamentary form of government the Executive is subordinated to the Legislature. The will of the Legislature is supreme in almost every sphere of governmental activity. Such a system prevailed in England and France.

A balancing of authority between the Executive and the Legislature may exist. One authority may be designed to check another. This is the case in the United States of America. The Congress of the U. S. A. can neither control the Executive directly nor can it make laws amending the constitution.

Thus, it will be apparent that there is much difference between one legislature and another in the scope of authority and consequently, in functions. But generally the functions of law-making bodies may be classified under four heads—Legislative, Taxative, Deliberative and Judicial.

Their primary business is to make the law of the land, to repeal laws which are not suited to the age, and to make them conform to the exigencies of time. The Legislative bodies exercise also taxative powers. They determine the method of raising money, the amount to be raised, and the manner in which it is to be spent. They control to a certain extent the domestic and foreign policy of the executive government through their control over finance and in some cases over ministers. They exercise certain judicial

functions through their powers of deciding contested elections and of settling their own procedure of work.

The functions of government in every civilised state have extended enormously in recent times and the result has been the widening of the sphere of activity of the Legislature. But the Legislatures are finding it impossible to cope with the increasing pressure of business. So even in advanced states like England, the Legislature is being forced to delegate a part of its authority to the administrative bodies. On the other hand, there are signs to show that people are losing their confidence in the multitudinous legislature, consisting of mere amateurs. This loss of confidence in Legislature is reflected in the demand for direct legislation by referendum and initiative and in the creation of commissions of experts.

Loss of confidence in Legislatures

## II. Structure of Legislature

In modern states laws are passed in the collective interest of the mass of the people; and various devices have been adopted to secure the "active consent of the citizens" in law-making. Legislation and taxation, two of the most important functions of the Legislature can be properly carried out only by means of adequate deliberation. "The Legislature is, par excellence, a deliberative body," says Leacock, "and for deliberation two heads are better than one, and two hundred are better than two. A legislative body must consist of many persons, representing numerous interests, various points of view, and different sections of the community." But if the size of the Legislature becomes very big, various complications arise in conducting the business before the house. Effective debate is impossible in a large body. A few persons only get an opportunity of speaking their mind and the rest remain silent auditors. The vote of the latter is not influenced by what is said in the Legislature but by party arrangements outside the Legislature. On the other hand, if the size of the Legislature is very small, one representative has to be elected by a very large number of voters. In this case it becomes well-nigh impossible for the representative to maintain any genuine personal relations with the electorate. Laski argues that no Legislature ought ever to exceed five hundred members, if it is to perform its function efficiently. But if the country is a big one with large population, the constituencies will be unwieldy. In the United States of America, there is one member for every 6958 square miles and 282,241 of the population in the House of Representatives. Under the Montague-Chelmsford Reforms in India the size of a constituency for the

Composition of Legislature

Legislative Assembly is 12000 to 24000 square miles. It must be admitted that under such a scheme of representation it is extremely difficult for the member to keep himself in touch with his constituency.

### III. Bicameral Legislature—its merits and demerits

The bicameral system of legislature has grown out of a historical accident, but arguments are now adduced to show that it is a necessary safeguard of constitutional liberty. In the mediæval legislatures there were three, four or five chambers, each representing a particular class or estate in the community. But in England, the lower clergy ceased to attend Parliament and preferred to vote their contribution to the government through their own Convocation, while the higher clergy sat with the greater nobles; and the lesser nobility, the knights of the shire, threw in their lot with the burghers. Thus, the English Parliament was divided into two Chambers, the House of Lords and the House of Commons in the middle of the fourteenth century. The success of constitutional government in England has convinced the people of different countries of the utility of the bicameral system. Historical and philosophical arguments have been adduced to show the necessity of this system.

Origin of  
two Houses  
of Parlia-  
ment in  
England

History shows that experiments in the unicameral method have generally been tried during periods of revolutionary reconstruction only. In England, the House of Lords was abolished during the early period of Cromwell's Protectorate; but was re-established after the Restoration. The Articles of Confederation in the United States made provision for one chamber; and this gave rise to so much dissatisfaction that it had to be given up. In France, again, the successive constitutions of 1789, 1791, and 1793 were based upon the unicameral principle. The proceedings of her Legislative Assemblies of the period "were marked by violence, instability and excesses of the worst kind." The Frenchmen, therefore, resorted to the bicameral system in 1795.

Failure of  
unicameral  
system

In the case of a federal state there is a special argument in favour of a Second Chamber. The Lower House represents the population of the federation as a whole, while the Second Chamber is so arranged as to embody the federal principle, or to enshrine the will of the states forming the federation. But the operation of party system has made it practically unnecessary to have any safeguard against the danger of smaller units of being overweighed by more populous neighbours. Members of the Republican

Need of a  
Second  
Chamber in  
a Federation



party in the U. S. A vote in much the same way in the Senate as in the House of Representatives. In those federal states, where there is no racial or religious question, growth of a sense of nationalism and of facilities in communication tends to make largely obsolete the original units of representation. But the states, having special representation in the Second Chamber, cling to it as a valuable privilege and would be most reluctant to abolish such a chamber. In Canada and Switzerland, a Second Chamber becomes all the more necessary because the racial interest of the French-Canadians and the religious interests of the Catholics, Calvinists and Lutherans have to be specially safeguarded.

Most of the unitary states of the world have adopted the bicameral system out of deliberate policy for its manifold advantages. Of these advantages, the following are the most important. First, the existence of a Second Chamber prevents the passage of hasty and ill-considered legislation by a single House. A Second Chamber interposes delay between the introduction and final adoption of a measure and thus affords time for reflection and deliberation. "The necessity of a second chamber," says Lecky, "to exercise a controlling, modifying, retarding influence has acquired almost the position of an axiom." But in every modern legislature a long procedure is prescribed for enacting bills. The first reading, the second reading, a severe scrutiny in the committee stage, sometimes the circulation of a bill for eliciting public opinion, and the third reading afford much time for discussion and analysis. Moreover, the delay which is necessary for the sake of safety is secured by the slowness with which a great organisation like a political party is persuaded to the acceptance of a novelty.

Secondly, it is argued that a Second Chamber affords protection to the individual against the despotism of a single chamber. The existence of a Second Chamber is said to be a guarantee of liberty as well as to some extent a safeguard against tyranny. The majority party in a single-chambered Legislature, conscious of having only itself to consult, may abuse its power, and try to absorb the powers of the executive and the judiciary. "The necessity of two chambers," says Bryce, "is based on the belief that the innate tendency of an assembly is to become hateful, tyrannical and corrupt, and needs to be checked by the existence of another house of equal authority."

A third advantage of the bicameral system is that it gives representation to special interests or classes in the state. In almost every state there are different classes, such as, Labour and Capital, Nobles and Commons etc. and unless every section of the community is represented in the Legislature, there would be oppression of one

Bicameral  
system  
prevents  
hasty legis-  
lation

It safeguards  
individual  
liberty

It gives re-  
presentation  
to the differ-  
ent interests

class by another. M. Duguit thinks that the best type of legislature would be that in which one chamber would represent the population as a whole, and another the various groups into which the population is divided

Fourthly, a second chamber based on the principle of nomination affords a chance to able men to enter the Legislature. Some eminent people do not like to undergo the trouble and botheration of election, but their counsel may be very valuable. Bryce thinks that in the present age when people are losing their faith in politicians, there is special need of creating a second chamber as a kind of reservoir of special knowledge. The Upper Houses should have a longer tenure than the Lower Chamber, and should consist of more experienced men

Able men  
may enter  
politics

It may be a  
reservoir of  
knowledge

Another advantage of doubtful merit is claimed for the bicameral system. Difference of opinion between the two Houses makes the executive stronger as it can appeal from one House to another. It may be said that the bicameral system maintains the independence of the executive. "Two houses," says Gettel, "checking each other, give greater freedom to the executive, and in the long run secure the best interests of both departments."

The Executive becomes  
stronger

#### Arguments in favour of Unicameral System

Abbe Sieyes, the most prolific Constitution-monger of the period of the first French Revolution called in question the utility of a second chamber by propounding a dilemma. He is said to have asked, "Of what use will a Second Chamber be? If it agrees with the Representative House, it will be superfluous, if it disagrees, mischievous."

A dilemma

Lord Bryce remarks that this dilemma recalls the story that attributed to the Khalif Omar when he permitted the destruction of the library at Alexandria, "If the books agree with the Koran, they are not needed; if they differ, they ought to perish." It may be further pointed out in refuting the Abbe's dilemma that a second chamber may do work involving neither agreement nor disagreement with lower chamber and it may, where it agrees in aims, suggest other and better means of attaining them. The remark of Sieyes, however, contains some grain of truth. If the Second Chamber is a nominated body like the British House of Lords, equal rights for all citizens are denied. A small class in the State is given a special control over policy. If the Second Chamber is filled up by members, nominated by the Executive, it would lack the authority possessed by the popularly elected chamber. If it is indirectly elected like

Bryce's  
reply

Difficulties  
of constituting a  
Second  
Chamber

the French Senate, it will give scope for bribery and corruption. Graham Wallas suggests that the indirect election should be based not upon inferior legislatures, but upon trades and professions. But it is very difficult to decide what weight is to be given to each trade and profession relative to another. Lees-Smith suggests the Norwegian plan according to which the second chamber would be a small body elected by the first, and roughly proportionate to the composition of the latter. Its function should be limited to the postponement and revision only. But undoubtedly such a chamber would be weak and somewhat superfluous.

The main contention against bicameralism is that the double chamber sacrifices the great principle of unity of the state.

**Divided power** Legislation being merely the expression of the common will, there is hardly any necessity of committing it to two separate assemblies, each having a veto upon the action of the other. It is said that a double chambered legislature is an assembly divided against itself. Laski holds that a second chamber is no more likely than the first to be correct in its judgment of the electoral will. "The necessary checks," he concludes, "are always present in the inertia of the mass, and the desire of a government to avoid large changes which may be disastrous. Any other checks will, almost inevitably, be a premium not upon improvement but upon opposition in terms of vested interest."

**Bicameral system is transitional in character** Gettel thinks that the bicameral system of legislature is a symptom of a transitional stage in political development. It stresses the difference of views and interests of the different classes in the state when unity of interests would prevail, there would be no necessity of two chambers. "Common discussion in one broadly representative chamber," says Amos, "must surpass in value any series of discussions conducted first by persons having exclusively one order of interests and afterwards by those having exclusively another order."

**Unicameral Legislatures in new constitutions** In spite of all these advantages, claimed on behalf of bicameralism, there has been recently a tendency to drift towards the argument for a single-chambered assembly; and it has been said that the advantages of a single-chambered assembly, under modern conditions, more than counter-balance the disadvantages. The bicameral principle, therefore, has been the target of attack by some political thinkers. Active movements have taken place for the substitution of a single chamber in the place of existing bicameral legislature. Thus, in the state of Queensland, Australia, in 1922 the upper chamber of the legislature was formally abolished. Greece,

Bulgaria, Costa Rica, Rumania, Honduras, Salvador, Panama, the Dominion Republic, all the Canadian provinces except two (Quebec and Nova Scotia), the cantons of Switzerland, many of the individual states of the German and Austrian federal republics, and most of those of the Latin American Federations, have unicameral legislatures. Several of the new states which came into existence after the last war—Yugoslavia, Finland, Latvia, and Esthonia—adopted the unicameral system. Again, the constituent assemblies or constitutional conventions, as Prof. Garner has pointed out, for framing and revising constitution, have universally been unicameral in structure and no one apparently, has ever proposed another system. Laski thinks that the single chamber and magni-competent Legislative Assembly seem best to answer the needs of the modern state.

#### IV. Composition and Functions of Upper Houses

Second chambers may be classified according to the method of composition into hereditary, nominated, partially elective and wholly elective. Hereditary second chambers are a relic of the medieval system of government. At the beginning of the present century, there were hereditary second chambers in Portugal, Austria, Hungary and England. With the exception of the British House of Lords, all other purely hereditary Upper Houses have been swept away by the war. Though the composition of the House of Lords has not been changed, yet it has been shorn of its powers by the Parliament Act of 1911. Democratic theory can not tolerate a hereditary second chamber. From time to time attempts are made in England to reform the composition of the House of Lords.

A nominated second chamber is distinguished from hereditary one by the fact that, while the office of hereditary peer is handed down from father to son, that of a nominated senator is terminable with death or after a defined period if the constitution so provides. The most important fully nominated second chambers exist in Italy and Canada. At present the Italian Senate consists of "one-fifth of generals, one-fifth of high officials, one-fifth of big industrialists and bankers and one-fifth of University professors and Fascist intellectuals." Theoretically, it has equal power with the Lower House, and no Bill can become law without its consent, yet in practice it cannot stand against the will of the Lower House, to which alone the Ministry is responsible.

The Senate in Canada is appointed by the Governor-General, on the advice of the Ministry of the day. It consists of ninety-six members, but the number of

Hereditary  
second  
chamber

Nominated  
second  
chamber in  
Italy

In Canada

representatives of the various provinces range from twenty-four to four. Each member must be at least thirty years of age and must have property worth at least 4000 dollars. The Canadian Senate has neither the power which attaches to an elective Second Chamber nor the usefulness of an Upper House which properly enshrines the federal idea. It does not usually oppose measures of first-class importance. When on rare occasions it does oppose, it defies public opinion.

There are some partially elected Upper Houses, of which those of Japan, Spain and South Africa deserve special mention.

**Partially  
elected  
second  
chambers** The Japanese House of Peers consists of the members of the Imperial family upon attaining their majority, princes and marquises at the age of twenty-five, a number of counts, viscounts, and barons, equal to one-fifth of the entire number of these three orders, elected for a term of seven years by the whole of them, the age-limit being twenty-five. Besides these, one member is elected in each city and prefecture by and from among the fifteen male inhabitants above the age of thirty who pay the highest amount of direct taxes when they are so elected. The Emperor nominates them to sit in the House of Peers for a term of seven years. The Japanese House of Peers is stronger than the House of Representatives. This is rather strange in view of the fact that the Second Chamber is not all a democratic body. But it must be remembered that democracy itself is new to Japan.

**Senate of the  
Union of  
South Africa** The Senate of South Africa consists of forty members, of whom eight are nominated by the Governor-General in Council and eight from each of the four provinces of the Union. The term of the Senate is normally ten years. As the ministers speak in it, it has got considerable power.

**Elected  
Second  
Chambers** Elected Second Chambers are to be found in federal as well as in unitary states. For the sake of clarity we shall take up the case of the fully-federalised states first. Both in the United States of America and the Commonwealth of Australia, the second chamber is elected and the term of the office of the senator is so determined as to ensure a continuity of life to the Senate. The Senate of the United States consists of 96 members, two being elected by the people on a general vote taken over each State. Its powers are greater than those of the House of Representatives, for it is not only a branch of the Legislature but also a sort of Council to the President, advising and to some extent controlling him in the appointment of officers and conducting of foreign policy.

The Australian Senate consists of 36 members, six being elected from each of the six states of the Commonwealth. The

whole state is the electoral area for senatorial elections and each voter has as many votes as there are places to be filled up. The function of the senate is purely legislative, but it can not initiate or amend a money bill. But unlike the British House of Lords the Australian Senate can reject finance bills.

Composition  
of the  
Australian  
Senate

In the unitary states like France and the Irish Free State, senates are fully elective. The French Senate consists of three hundred members whose term is nine years. One third of the membership is renewed every three years.

Composition  
of the  
French  
Senate

The senate is elected indirectly, by means of "electoral colleges" constituted for the purpose in the several departments and colonies. The electoral college in each case consists of deputies from the department, the members of the general council of the department, the members of the councils of its arrondissements, and delegates chosen in each commune from the communal councils. This plan is followed in Sweden too. It has been called "popular election in the second degree," because the electors have been themselves elected by bodies chosen by the citizens. In all matters, except finance, the senate has got co-ordinate authority with the chamber of deputies. It has frequently forced the resignation of a ministry.

The Council of States in Switzerland, according to Woodrow Wilson, "can hardly be called the federal chamber: neither is it merely a second chamber. Its position is anomalous." It consists of two members from each of the nineteen cantons and one member from each of the six half-cantons. But the mode of election is left to each canton; so that in some cantons the members are popularly elected and in seven they are chosen by the legislative body of the canton. The Council of States is in no way differentiated in functions from the Lower House. It does not safeguard the rights of the cantons, nor does it possess the authority to make final revision. The people themselves exercise the final authority in law-making through the instrument of the Referendum.

The Swiss  
Council of  
States

The second chamber in Germany was called the Reichsrat. The states were represented in it by members of their Governments. The states were not equally represented in it and thus it failed to embody the safeguarding principle of federalism. It could not initiate any law, nor was its consent necessary for the passage of legislation. But it had power to lodge an objection with the Government regarding any Bill passed by the Lower House.

The German  
Reichsrat

Mr. and Mrs. Webb are dissatisfied with the principle of

composition and function of all the existing second chambers ; but they think that the volume of work of modern legislatures has increased to such an extent that a division of their business is desirable. They have propounded the following scheme in their

Scheme of  
S. B. Webb work "A Constitution for the Socialist Commonwealth of Great Britain" "What we shall call the Political Democracy dealing with national defence, international relations, and the administration of justice, needs to be set apart from what we propose call the Social Democracy, to which is entrusted the national administration of the industries and services by and through which the community lives... "

The Co-operative Commonwealth of to-morrow must accordingly have, not one national assembly only, but two, each with its own sphere ; not of course, without mutual relations, to be hereafter discovered, but equal and independent, and neither of them first or last We regard two co-ordinate national assemblies, one dealing with criminal law and political dominion, and the other with economic and social administration, not merely as the only effective way of remedying the present congestion of parliamentary business, but also as an essential condition of the progressive substitution, with any approach to completeness of the community for the private capitalist." But can two such assemblies be maintained on a footing of equality ? The body which will have the taxing power will soon acquire superiority over the other. Moreover, foreign policy cannot be separated from economic policy ; imposition of tariff, raising of foreign loan, state-purchase of raw materials from foreign countries are bound to be matters of common interest to both the bodies

The analysis of the composition and functions of the second chambers will bear out the following conclusion, arrived at by Lord Bryce,—“Broadly speaking, the powers of the Second Chamber vary with the mode of its formation. They are widest where it is directly elected, narrowest where it is nominated or hereditary. The more it is popular the more authority, the less it is popular the less authority will it possess. Where not directly elected, it is always under the disadvantage of fearing to displease the Popular House, lest the latter should seek to get rid of its resistance by rousing clamour among the people against it ”

Democratic  
Second  
Chambers  
possess great  
powers

## V. How are Deadlocks Avoided ?

Three theories have been held regarding the functions of a second chamber. The second chamber may have equal power in all matters with the Popular House. Such a position

is sure to give rise to frequent deadlocks. The second view is that it should be subordinate in financial legislation to the lower chamber, but should enjoy equal power in all other matters. In this case, too, deadlocks between the two chambers may arise. Thirdly, the second chamber may have the limited power of suggesting amendments and recommending modifications of detail only.

Three theories regarding the functions of Second Chambers

Where the third view prevails, a time limit is fixed after which the second chamber must accept any Bill passed a second or third time which it has previously rejected. Such a method of avoiding deadlock is to be found in the English constitution. Another method of settling differences between the two chambers is followed in the Commonwealth of Australia. When the two Houses can not agree, in Australia, the Legislature is dissolved and the contentious Bill is again voted on by both Houses after the general election and ultimately by the Houses sitting together. In Switzerland, the controversial question is referred to the whole people to be voted on by them. In France and the United States, no constitutional provision for terminating a dispute exists. "One or other house gives way ;" says Bryce, "in France usually the senate, in the United States more frequently the House of Representatives."

Four methods of solving deadlocks

## VI. Composition of Lower Houses

Though the principle of composition of the second chamber is different in different states, there is substantial agreement concerning the composition of their lower houses. In every modern state the right of choosing representatives is extended to a large number of citizens. Seats are generally distributed to constituencies according to population. The method of direct election is followed almost everywhere, and there is a general feeling that no intermediate body should intervene between the voters and their representatives in the lower chamber.

Direct election according to population

While there is harmony of views regarding these matters, there have arisen controversies regarding the desirability of further extension of suffrage, the principle of forming multi-member constituency and introducing proportional representation. These questions will be taken up for discussion in subsequent sections of this chapter.

Various problems

## VII. Procedure in Legislature

Legislative bodies generally adopt certain rules regulating their organization, methods of passing laws and voting taxes and



adjournment. The procedural rules prevent hasty action, insure orderly deliberation, and allow the effective utilization of the limited time available for discharging the multifarious duties assumed by the legislature.

There is substantial agreement in the procedure followed by the legislative bodies of most of the democratic countries, because they have taken up the model furnished by the British Parliament. Thus, in every legislature we find that bills are first formally introduced, then discussed by committees and debated on the floor; amendments are proposed and voted on and a final vote is taken on the amended measure. There are, however, some important points of divergence from the British model in the procedure followed in the American, French, Italian and German legislative bodies.

The most important difference is found in the function of committees of legislative bodies. In the House of Commons the function of the standing committees is limited to amendment of bills only in terms of the general subject matter already decided on; it is unusual for a committee to make any change of controversial character.

Moreover, the most important bills do not go to a standing committee at all but are taken up by the Committee of the whole House. In the U. S. A. the committees can make whatever changes they like in the bill and even kill it or introduce an entirely new bill. Bills go to committees before they are discussed in the Congress and the vast majority of bills die in the committee stage there. In France the committees, which are known as legislative commissions, can introduce important amendments in the bill and the discussion on it in the full house is directed by the president of the committee rather than by the member who originally introduced the bill. In Germany before 1933 the Reichstag committees received bills after they had been debated in the whole house but they could subsequently introduce amendments to these.

Another important variation in the procedure relates to the position of the Speaker, that is, the Chairman of the lower house of legislature. The Speaker is, of course, everywhere originally elected by the party commanding majority from amongst themselves. But once elected the Speaker divests himself of party character and becomes a completely impartial moderator of the proceedings. He takes no part in party activities, never speaks for or against any proposal, in the House, and his constituency is not usually contested by the opposing party in a general election. But in the House of Representatives of the U. S. A. the Speaker not only retains his party affiliation but also continues to be one of the principal

leaders of the majority party. He introduces bills, takes part in debate, and votes on many occasions, even when there is no tie. The President of the Chamber of Deputies in France continues to take part in party politics, occasionally speaks from the floor and votes ; but while conducting the proceedings in the House he maintains an attitude of strict neutrality. In the provincial legislatures of India, the Speakers have retained their party affiliation. One Speaker in a Congress province publicly declared that he would remain an active member of his party. But no Speaker has as yet departed from the ideal of strict neutrality and impartiality while presiding over the House. In Japan, the Speaker of the House of Representatives continues to be a member of a party.

"In all countries the fact that procedural rules and practice have increasingly circumscribed" observes J. J. Senturia, "the function of the private member has given rise to considerable complaint. Most of the witnesses who testified before the Select Committee on Procedure on Public Business of the House of Commons in 1930 and 1931 declared that the prestige of Parliament was declining because the government was curtailing the rights of private members and was converting them into voting machines who, without participating in or even hearing the debate, rush into the chamber at the cry of "division" to march obediently into the lobby indicated by the Whip's thumb."

Decline of  
Parliament's  
power and  
prestige

Certain rules are observed in every legislature for terminating debates. A debate may be brought to an end if a motion, called the "Previous Question" is moved by any member and accepted by the majority of those present. Discussions on certain clauses of a bill or the whole of it may be altogether precluded by the passing of a resolution known as the "Guillotine" or "Closure by Compartmentment."

Devices for  
expediting  
Parliamentary  
business

Modern legislative bodies are overburdened with work. Some relief may be given to these bodies by simplifying the old procedure and by delegating some work to subordinate bodies. Valuable time may be saved by adopting modern means of voting ; by abrogation of the custom of having bills read aloud in full, by curtailing debates in some cases, and by modification of the "unanimous consent" principle, which facilitates individual obstruction. Parliamentary function should be limited to the laying down of broad general principles, leaving details to the proper administrative officials. Private bills affecting certain localities or individuals can be easily dealt with by judicial bodies.

Some  
suggestions  
for relieving  
legislature

### VIII. Direct Legislation by the People

The movement in favour of direct legislation by the whole people has originated from two considerations, one theoretic, the other practical. The theoretic consideration is that as all power belongs of right to the people, they should take a direct part in making the law. The practical consideration is that people have been disappointed with the Legislature in many cases and as such want power to review its action and to make laws without its intervention. In most of the states the party discipline is so strong as to destroy the individual representation.

There are three ultra-democratic devices to secure the direct intervention of the people in legislation. These are the Referendum, the Popular Initiative and the Recall. The Referendum allows the voters to review the acts of the legislature before they actually pass into law; the Popular Initiative gives them the right to propose measures to be passed by their representatives, and the Recall empowers them to remove an unsatisfactory representative before the expiry of his term of office. Besides Referendum, Initiative and Recall we may also add Plebiscite and Town meeting. Plebiscite provides for the submission of a certain matter to popular vote and ascertains the policy of the government regarding the matter. Town meeting prevails in New England (U. S. A.), "where the voters in mass meeting, elect town-officers and decide questions of local concern."

In the rigid constitutions of Switzerland, Australia and Germany amendments to the constitution must be put before the people. There are two kinds of Referendum with regard to ordinary laws. In some of the Swiss cantons all laws whatsoever must be submitted to popular vote. This is called the Obligatory Referendum. In other cantons and in the Confederation and also in the American States and Esthonia, the submission of a law takes place only at the demand of a prescribed number of citizens. This is known as the Optional or Facultative Referendum. In Switzerland as well as in most of the American States any law demanded by the Legislature to be urgent is exempted from the operation of the Referendum.

The principle of the Initiative has been adopted in Switzerland, some of the American states, Germany and Esthonia. In the Swiss Confederation 50,000 citizens may propose an amendment to the Federal constitution either as a specific proposal or as a request that such be drawn up by

Causes of demand

Referendum and Initiative

Two kinds of Referendum

Mechanism of the Initiative

the legislature. "In the first case, it must be submitted directly to a popular vote ; in the second, the people must be asked if they desire the proposal to be proceeded with, and if they by a majority so desire, then the bill is drawn up and finally submitted for acceptance or rejection. In the cantons the regulations for the use of the Initiative go farther and include not only constitutional matters, but ordinary laws and resolutions." In the United States, the Initiative is in force in 19 states for laws, and in 14 states for constitutional amendments. In Germany if one-tenth of the voters initiate a request for the introduction of a bill, the government must present it to the Reichstag. If the Reichstag passes it, the law is promulgated without further ado, if it does not, the bill must be submitted to a Referendum.

The Recall prevails only in the Western American states, where a prescribed number of citizens sends up a petition demanding the dismissal of an elected officer, whether executive or legislative, a popular vote is taken in the matter. Provision for Recall gives much power in the hand of the electors indeed, but it gives scope for political intrigue. A defeated rival may try to secure signature of voters in a petition recalling the elected member.

If, however, proper safeguards are used, Recall may prove to be of great value to the electorate by enabling it to exercise some check both upon the member and his party. Recall should not be allowed to operate either in the first or in the last year of the life of a Legislature. This makes its operation limited to the intervening three years during which it may be demanded by not less than half the electorate. When such a demand is made a bye-election should be held to decide whether the member is to be retained or not. He should not be recalled unless two-thirds of those voting desired a change. In such a form Recall would serve as a warning to the Legislature that it needs to make itself trusted.

In Switzerland, every political issue to be voted by the people is abundantly discussed at public meetings and in the press. Bryce opines that the Swiss are the right sort of people in which to try the experiment of the Referendum. In the Western states of America too, the experiment can not be pronounced to be a failure. But the example of the Swiss and the Americans "will not suffice to prove that peoples like those of Lithuania and Poland, Serbia and Rumania, destitute of the experience Western Americans have enjoyed, can expect results equally good"—(Bryce).

In recent times another method of ascertaining the opinion of the people directly without the intervention of representatives

Recall

Political  
education is  
needed  
before  
introducing  
Referendum

has come into vogue. This method is called Plebiscite which means literally a Referendum on any question. Napoleon Bonaparte asked the consent of the people in 1799 in the matter of the Constitution of the Consulate and again in 1802 when the Consulate was conferred on him for life. Louis Napoleon followed the precedent set up by his great uncle. Hitler has taken recourse to it again and again. But the dictators never allowed freedom of speech or freedom of assembly to the people, whose opinion they sought. Under such circumstances, referring a measure to the people merely satisfies the instinct of the dictator for getting applause.

### IX. Merits and defects of Direct Legislation

Direct legislation possesses, theoretically, certain merits. If the people themselves take the initiative in formulating schemes of reform they want or if the ultimate ratifying authority rests with them, they are compelled to take an active interest in the political affairs of the country. Initiative and Referendum may thus become an instrument of practical instruction to the people. But from the experience it has been found that the number of persons voting in a referendum is often so small that it is difficult, from the size of the mass abstaining from voting, to know whether there is any public opinion at all upon the question raised. It is not, indeed, possible for many persons to vote on the complex measures which are referred to them. Even well-informed citizens can hardly grasp the implications of laws on intricate subjects like Banking, Currency, Tariff and Public Control of an industry. Moreover, the general mass of voters can only agree to a certain principle of legislation but they are not able to enunciate a principle in relation to its working technique, which invariably requires expert knowledge. A simple 'yes' or 'no' can not take into account the complexities which are inherent in almost all the questions which require solution in a modern state. The average voter has no will or opinion on most questions of social significance.

The enthusiasts for direct legislation by the people contend that Referendum and Initiative correct the faults of legislatures which may act corruptly or in defiance of their mandate. But the electorate is usually influenced by newspapers and platform-speeches, which do not always uphold the views conducive to general welfare. Defects of legislature can be remedied only by the elevation of the moral and intellectual standards of the electorate as a whole, and not by the mere multiplication of machinery. It is said that under direct legislation party politics can not

Legislation on complex problems can not be undertaken by the people directly

Electorate is hypnotised by propaganda

acquire sinister proportions and group authority can not be established. But a group or faction working hard may mislead the mass of voters more easily than the members of Legislature. Moreover, if a voter wants to give his considered and honest opinion on a question like devaluation of rupee, he will simply be bewildered by the variety of opinions expressed by different classes and sections of the community.

Direct legislation has not led to any wide-spread changes anywhere. The general mass of people are conservative in temperament and the devices for direct legislation have simply rallied the conservative forces of society. The experience of direct legislation in Switzerland and the states in America goes to show that it has made little difference, either for improvement or the reverse, to the quality of the Legislature. The opponents of direct legislation argue that if the people become the final authority for accepting or rejecting a measure, the sense of responsibility of a Legislative Assembly would diminish. But this argument presupposes a far greater frequency of reference to the people than is likely to be the case. In a small state with an enlightened electorate, Referendum and Initiative would be of great value. But in a large country like England it would cause such delay in the promulgation of laws that society would be deprived of benefits which these laws were designed to bestow. Owing to the prevalence of wide-spread ignorance and illiteracy in India it is impossible to introduce Referendum and Initiative. Moreover, the large size of the electorate makes their introduction impossible both on financial and on administrative grounds.

If direct legislation is not possible in large states, is there no means of making the influence of the electors felt during the intervals between general elections? Yes, there are four ways by which the voters can exercise influence in determining policy. First, the Political parties may be made more responsive to the will of their rank and file than is now the case. Secondly, the voters can form themselves into a variety of propaganda-associations connected with particular issues. The resolutions passed in such associations can not but influence the Legislature. Thirdly, the voters are organized in associations in their aspect of producers, such as manufacturers, miners, engineers, teachers, doctors. Such associations will put pressure on the Legislature for the remedies which particularly concern the special problems of their profession. Fourthly, the consumers of each well-defined locality may organize themselves into groups to see that the latest inventions were properly utilised and that the price charged does not exceed the cost of production of the marginal producer.

People are  
conservative  
in tempera-  
ment

Indirect  
influence of  
people on  
Legislation

## CHAPTER XIV

### PROBLEMS OF REPRESENTATION AND OF MINORITIES

#### I. Universal Adult Suffrage

The basic principle of democracy is to provide a machinery through which the will of the average citizen has channels of direct access to the source of authority. The function of the Legislature is to make laws which govern the life of citizens. Democrats hold that each and every citizen should have the right not only to represent his or her views but also to make and unmake governments.

Arguments  
in favour  
of adult  
suffrage

This right has been recognised after severe struggles of nearly a century and a half. It was declared on the eve of the French Revolution that "All the individuals who compose the association have the inalienable and sacred right to participate in the formation of the law, and if each could make his particular will known, the gathering of all these wills would variably form the general will, and this would be the final degree of political perfection. None can be deprived of this right upon any pretext or in any government." The theory of natural rights has been given up to-day, but more cogent and powerful reasons have been found to show the necessity of conferring the right to enfranchise on every individual. Without franchise there can be no freedom. History has demonstrated that the will of those who are excluded from franchise is not considered by the rulers of the state in the making of policy. "To be free," argues Laski, "a people must be able to choose its rulers at stated intervals simply because there is no other way in which their wants, as they experience those wants, will receive attention..... Power that is unaccountable makes instruments of men who should be ends in themselves. Responsible government in a democracy lives always in the shadow of coming defeat; and this makes it eager to satisfy those with whose destinies it is charged." If the right to franchise is conferred on a particular class or section of population to the exclusion of others, the Legislature is bound to discriminate against the class or section excluded from power.

It is by the threat of violence, as in England, or by actual violence, as in France, that the privileged classes have been forced to admit all citizens to the right of franchise. In the post-war constitutions of Europe adult suffrage became an usual feature. The Lower Chamber in Poland, Czecho-Slovakia, Austria, Esthonia and Germany were

Modern  
democracies  
have accepted  
adult  
suffrage

elected by all adult men and women. The new constitution of Russia has also adopted this principle. All the Dominions in the British Commonwealth have introduced adult suffrage with a few restrictions on certain classes of people.

But in India only 27 per cent of the total adult population have been enfranchised under the Constitution of 1935. Various qualifications, such as payment of Local, Provincial and Central taxes, ownership of property and education <sup>Restriction in India</sup> fitness, have been prescribed for franchise. There is, however, no uniformity in these qualifications among the different provinces or among the different constituencies in the same province. Thus, with regard to educational qualification, in Madras it is simple literacy, in the U. P. the upper primary examination, in the Punjab the primary examination, in Assam middle school leaving certificate, but in Bengal, Bombay, Bihar, Orissa and Sind the qualification is matriculation examination. Madras is not certainly more backward than Bengal and Bombay, and yet the educational qualification there is much lower than in the other two Presidencies. But this divergence is a minor question. The fundamental question is whether any restriction at all is desirable in the matter of franchise.

In the middle of the nineteenth century when franchise was being extended, John Stuart Mill insisted on certain qualifications for voters. In his opinion, every voter should be able to read, write and perform sum in the Rule of Three. "If government by the whole people is to be a success," observes Garner, "they must be fitted and <sup>Educational qualification</sup> made capable for self-government". "To vest the power of choosing those who are to rule the state in the hands of the incapable and unworthy classes", as Bluntschli justly remarks, "would mean state-suicide". "Give the suffrage to the ignorant", says Laveleye, "and they will fall into anarchy to-day and into despotism to-morrow". Whatever be the truth in either proposition we should do well to heed the saying of John Stuart Mill that "universal teaching must precede universal enfranchisement." But this is putting the cart before the horse. If franchise is extended to the illiterate classes, the governing classes will try to educate them with a view to gain their support. A large number of illiterate factory-workers were enfranchised by the Second Reform Act in England in 1867 and then the ruling classes decided to educate "their masters." Moreover, neither the knowledge of reading, writing and arithmetic, nor high proficiency in Philosophy or Mathematics does equip a person with the requisite capacity and discretion to exercise his franchise properly. A real knowledge of social affairs is fundamental to any real enfranchisement and sound



decisions. The education test is no doubt sound in principle, but the difficulty lies in the lack of a just and practical criterion by which it can be applied. "There is no doubt," says Finer, "that tests based on knowledge now available, and indispensable to rational voting, would exclude some 95 per cent of all adults from franchise."

In the nineteenth century possession of property was regarded as an essential requisite for franchise for three reasons. First, those who had property were said to have some stake in the country and as such were bound to give their considered opinion at the time of election. Secondly, it was apprehended that if franchise be extended to those who do not possess property would make an attempt to put an end to private property. Thirdly, it was thought that those who possessed property were men of education and so were competent to pronounce upon public affairs. But with the spread of general education among all classes, the third argument has no longer any validity. If franchise is limited to the propertied class only, government becomes corrupt and manifests all the evil features of the ancient oligarchy. Moreover, though the property qualification has been abolished in all progressive states, yet the propertied class exercises too much influence in the actual administration of the country. They are sufficiently powerful and do not require any special protection. It has also to be remembered that men without property have as much stake in the country as the propertied class has. Every citizen is entitled to see that the government is conducted in such a way as to give adequate protection to his life and liberty and to improve the general condition of the country. It is for this reason that modern opinion advocates the abolition of property qualification.

In every state franchise is limited only to those who have attained the legal majority, though the age of attaining majority differs from country to country. In Russia, Turkey and Argentina the age of majority is 18, in Germany and Switzerland 20, in Britain, France, Italy, the U. S. A., Poland and Belgium 21, in Norway 23, in Finland 24, and in Spain, Japan, Denmark and Holland 25. The reason for excluding minors is that their mind is not sufficiently developed to deliver a sound judgment.

The question whether a person should have his residence in the place where he votes or from where he stands as a candidate has been much debated. The condition like that of the United States requiring a person to vote only in that district which contains his residence promotes sectional outlook and introduces provincialism at the

**Property  
qualification**

**Age  
qualification**

**Residential  
qualification**

expense of national requirements. In England, a person may vote in every district in which he or she possesses the qualification locally required. The question which is really important in this connection is whether a candidate should be a resident of the constituency from which he seeks election. If the residential qualification is insisted on, men of inferior qualifications may be returned to the Legislature to the exclusion of more capable men, who may reside in a particular electoral division in large number. The ability, at the command of a state," observes Laski, "does not distribute itself with mathematical accuracy over the electoral divisions. New York is more likely to have a number of men capable of playing a distinguished part in the Senate than Delaware or Nevada." If the residential qualification is rigidly enforced, the candidate may prefer getting himself elected with the help of sinister interests to defeat and total exclusion from political life. Some constituencies, again, have pronounced views on certain subjects, and if the resident representative differs from these views, he would have no chance of being re-elected. Universal adult suffrage should mean also the right of adult women to vote. In the last century there was a good deal of controversy in the western countries on this topic. But now-a-days most of the enlightened states of the world have allowed the women to exercise the right of franchise.

## II. Franchise for Women

In the first half of the nineteenth century, extension of franchise to women was not considered essential to the principle of democratic government. The demand for universal suffrage, as put forward by agitators like the Chartists, meant in practice the demand for manhood suffrage to the exclusion of woman suffrage. Jeremy Bentham and John Stuart Mill took up the cause of women and adduced the following arguments to show that there can be no valid reason to debar women from franchise.

Champions  
of women's  
cause

First, sex alone should not prove to be a qualification or disqualification for the right of franchise; the criterion for determining the right is not physical, but moral and intellectual. "If," observed Judge Story, "it be said that all men have a natural, equal and inalienable right to vote because they are born free and equal; that they have common rights and interests entitled to protection and therefore an equal right to decide, either personally or by their chosen representatives, upon the laws and regulations which shall control measure, and sustain those rights and interests—what is there in those considerations which is not equally

Sex is no  
bar to  
political  
power

applicable to females, as free, intelligent, moral beings entitled to equal rights and interests and protection and having, a vital stake in all the regulations and laws of society?"

Secondly, laws concerning the rights of women, should not be made by men alone. Women are, moreover, physically weaker, and therefore, require special legislative protection, which can be secured to them only by giving them franchise.

Women have also interests to safeguard

Thirdly, as women have received in most of the states equal civil rights with men, and are freely admitted to all professions and employments, there is no reason why they should not have political enfranchisement. If educational qualifications and payment of taxes be considered essential conditions for franchise, exclusion of self-supporting educated women from the right to vote becomes extremely illogical.

Many women possess highest qualifications

Fourthly, woman suffrage would introduce into public life a purifying element. Women can exercise their moral influence on their male relatives in preventing the latter from selling their votes for any extraneous consideration. Moreover, they can wield a decisive influence in securing the enactment of advanced social legislation, particularly as regards such matters as child labour, the employment of women in factories, the public health, tenement houses, and pure food legislation.

Women exercise moral influence on political life

Antagonists of women's rights advanced a few arguments which are mentioned here to show how fallacious these were.

The opponents of women's franchise pointed out that active participation of women in public life would tend to destroy her feminine qualities and interfere with her domestic duty. It may be said in reply that occasional exercise of the right to choose representatives does not take much time; on the other hand, the interest taken in political affairs sharpens the intellect of women.

Does Politics interfere with domestic duties?

Again, the opponents of woman-franchise argue that if the wife does agree with the husband in the matter of voting; her vote is a mere duplication of her husband's vote; if, on the other hand, she does not agree with her husband, discord would be introduced in family life. To this objection Mill replied,—“There would be some benefit to them individually in having something to bestow which their male relatives cannot exact, and are yet desirous to have. It would also be no small thing that the husband would necessarily discuss the matter with his wife and that the vote would not be his exclusive affair, but a joint concern.”

Are women dominated by their husbands?

Some opponents of female suffrage opine that as women are incapable of military service, they should have no franchise. To this argument it may be replied that many women are now serving as soldiers and nurses. Moreover, men who are not trained as soldiers are rarely called into the service. If it be argued that majority of women in some states do not desire franchise, Mill would reply,—“It is a benefit to human beings to take off their fetters, even if they do not desire to walk.”

Women are  
incapable  
of bearing  
arms

Franchise has been extended to women in all western countries, except Latin Europe, where there still lingers a religious sentiment against the political emancipation of women.

In Japan women do not enjoy franchise. In India the ratio of women to men voters for the Provincial Legislature was roughly speaking 1 to 20 under the Constitution of 1919. According to the present constitution the ratio has increased to 1 woman as against 4·5 men voters. The right to franchise has been extended to all women (a) who possess a property qualification in their own right : (b) who are the wives or widows of men with the property qualifications and (c) who have an educational qualification. It is a matter of great regret that very few women voters in India cared to exercise their franchise in the election to Provincial Legislative Assemblies in 1937. The percentage of women who voted in contested constituencies was 5·2 in Bengal, 7·9 in Bihar, 19·3 in the U. P., 31·5 in Madras, 33·5 in the Punjab and 42·4 in Bombay. This shows that women of those provinces where the Purdah system prevails, were more negligent in the performance of their civic duties than their sisters of the more enlightened provinces.

Present  
position of  
women  
franchise

### III. Plural Voting and Weighted Voting

It has been contended by many that universal suffrage, without taking into consideration the differences in wealth, age and education, does not conduce to the development of a representative public opinion. They say that those who are more capable and efficient should be allowed to exercise a wider discretion than the ordinary electors. To this end in some countries the system of plural voting obtains. Under this system the same men possessing properties in different constituencies may vote in all these constituencies. Again some electors may exercise their votes several times as owners of properties, payers of income tax and as graduates of universities. But with the progress of education and democratic ideas in all countries this system is gradually dying out. In India, the system of plural voting has been abolished, though graduates of the university and the

Meaning of  
plural voting

It is anti-  
democratic

electors of the land-holders' constituency have been allowed to exercise a special second vote by the Act of 1935.

A variety of plural voting known as the weighted voting exists in Belgium, where the advantages of universal suffrage are sought to be combined with plural voting. Every male citizen in Belgium of twentyfive years and a resident at least of one year is allowed one vote. But every body who is aged 35 years, has a legitimate issue and pays a tax of 5 francs to the State, is allowed a supplementary vote. A land-holder again even at the age of 25 is entitled to this second vote if his property totals at least 2,000 francs. Two supplementary votes are allowed to every citizen of twentyfive years, who possesses a diploma from an institution of higher learning or a certificate showing the completion of a course of secondary education or who holds or has held a public office or who practises or has practised a private profession which presupposes that the holders possess at least some secondary education. The maximum number of votes that can be enjoyed by a single person is limited to three.

The underlying principle of this system, in the words of Gilchrist, is as follows: "Weighted voting means that the persons who have greater interests at stake or persons better qualified to vote receive more votes than those less qualified or who have smaller stake in the country. The system prevents the ignorant and uninstructed mass of the community from overriding the intelligent and capable few. It recognizes that some men are wiser and better fitted to choose and that some men's opinions should count for more than other's in ascertaining the general will."

The system is subversive of the principle of democracy for it discriminates between man and man simply because one man happens to be rich and another man poor. Besides, a mere course of training in an institution does not necessarily mean that a man receiving the education is far superior in every respect to another man who has not received any higher education but has a practical insight of men and affairs to a greater extent than the former.

The argument that a man engaged in a profession has acquired greater capacity so as to be entitled to plural voting, is not always tenable. For it happens that an employee possesses a greater efficiency and interest in public affairs than his employer.

Under this system, an undue premium is given to education. Mill strongly advocated the view that greater weight should be given to educated people. The real difficulty lies in the fact that there is no standard whereby

The weighted voting

It is a check on the rule of the ignorant

There is no safe criterion of superiority

Employees are not always inferior to employers

Difficulties of educational test

the fitness or otherwise may be measured. Education is not of the same type in all institutions and besides it does not impart the same sort of training everywhere. And all minds also do not receive equal benefit from education. So a uniform privilege extended to all does not ensure beneficial results.

The system of plural voting often leads to corruption and it serves the interests of party politics very well. So this instrument is employed to secure results which are not conducive to a representative democracy.

Danger of  
corruption

#### IV. Size of Electoral Districts

It is customary to divide the state into electoral districts or constituencies for the sake of convenience in choosing representatives. Each constituency may return either one or several members. Where one member alone is returned from each constituency, it is called the single member district plan or *Scrutin de Arrondissement*. The plan by which a number of representatives is chosen on the same ticket is known as the general ticket method or *scrutin de liste*. In Great Britain, the United States and France (since 1927) the former method prevails, while in most of the other continental states the latter method has been adopted. Both the methods have got some advantages and disadvantages.

Two  
methods of  
forming  
constituen-  
cies

The District Ticket Plan is simple and convenient as the voter has simply the duty of casting a ballot for one representative. The voter is likely to know the respective merits of the rival candidates; and the chosen representative is also acquainted with the needs of his constituency. But the very advantages of this method are the source of its grave demerits. The representative being chosen from a small electoral district, is likely to take a narrow and patricularistic view of public questions instead of a broad national view. Moreover, the district plan narrows the range of choice of voters and may lead to the election of inferior men.

District  
plan may  
promote  
sectionalism

It is claimed by Garner that the district method tends to secure representation to the minority party in the state, city or province as a whole. "If all the representatives are chosen from the state at large on a general ticket, the party having a bare majority will elect all and the minority none." But the experience of the elections in England and the United States shows that the single-member constituency plan can not guarantee that the majority party in

It gives  
representa-  
tion to  
minorities

the country will gain a majority in the assembly or that a very large minority may be adequately represented. At the general election of Great Britain in 1922, the Conservatives won 296 seats with 5,381,433 votes, the Labour party 138 seats with 4,237,490 votes, and the Liberals 54 seats with 2,621,168 votes. This means that the Conservatives polled only 18,180 votes per seat, the Labour party 30,706 votes per seat, and the Liberals as many as 48,540 votes per seat. Such glaring anomalies have been brought to light after each subsequent election. Similar illustrations of the shortcoming of the one-member constituency are to be found in the United States too. In both the countries agitation is being made to remedy these anomalies. Laski, however, is in favour of single-member constituency because in a multi-member constituency there can be hardly any personal relation between the member and his constituents.

Need of  
propor-  
tional  
representa-  
tion

## V. Direct vs. Indirect Election

The influence and role of the elector vary with the directness or indirectness with which the electoral function is exercised. In various countries of Europe when large extension of the suffrage was made, a system of indirect and double election was introduced at the same time as a means of counter-acting or attenuating the possible evils of a democratic suffrage. In France, the senators are elected indirectly. Indirect election has also been adopted for electing members of the future Federal House of Assembly.

Two  
methods of  
representa-  
tion

The principal argument in favour of indirect election is that it eliminates to some extent the possible dangers of universal suffrage by confining the ultimate choice to a body of select persons possessing a higher average of ability and necessarily feeling a keener sense of responsibility. Secondly, it tends to diminish the evils of party passion and struggle by removing the object of the popular choice one degree and confining the function of the electorate as a whole to the choice of those upon whom the ultimate responsibility must rest. But where the party system is highly developed, the indirect scheme will defeat its purpose as the intermediate electors will be chosen under party pledges to vote for particular candidates. Intermediate electors are likely to think lightly of their responsibility as their offices are temporary and occasional. The primary electors are likely to lose vivid interest in the final results as the final choice is taken away from them. Thus indirect election is out of tune with the very spirit of modern democracy. Finally the system

Advantages  
of indirect  
election

Its dis-  
advantages

might give rise to bribery and corruption as the number of electors, is comparatively small.

## VI. Territorial *vs.* Functional Representation.

The democratic states of Europe adopted the principle of territorial representation because it was considered the most convenient way of grouping a large body of citizens. In the middle ages, when Parliament originated in England and in a few of the continental states, tenure of land was the basis of political obligation and the produce of land was the chief source of taxation. There was some sort of homogeneity of interest in each locality. So territorial areas were regarded as proper units for representation in Parliament. Later on, political theorists justified the system of territorial representation on the ground that the interests within a particular region are fundamentally unified and that there is difference in interests between one region and another. But the development of communications, growth of the party system, and the rise of numerous trades and professions in each locality have, on the one hand, blurred out the distinctiveness of particular regions and on the other, destroyed the homogeneity of different regions.

Causes of  
adoption of  
territorial  
representa-  
tion

The scheme of territorial representation has been attacked mainly on two grounds. First, that the voters in any territorial constituency are rarely homogeneous in political needs and opinions and so they can not be represented properly by one man. Secondly, under the territorial system only the majority fractions of the several groups in society are represented and the minorities are given no voice in the government of the country. The critics of territorial representation, therefore, suggest functional representation as a remedy of the evils they complain of.

Grounds of  
objections  
to it

The advocates of functional representation argue that the people engaged in the same kind of work or owning the same kind of property have more in common than people living in the same district. Conflict of economic interests is the chief political issue of the present day and as such each economic group, as for example, manufacturers, artisans, landlords, farmers, agricultural labourers, traders, bankers, the liberal professions, governmental employees etc., should have separate representation. The provisional German Economic Council set up in 1920 contained 346 members of the following categories: Agriculture and Forestry 68 representatives, Gardening and Fisheries 6, Industry 68, Commerce, Banking and Insurance 44, Handicrafts 36, Consumers 30, Government officials and liberal

Scheme of  
functional  
representa-  
tion

Practical  
difficulties  
in functional  
representa-  
tion



professions 16 and Government nominees 24 representatives. In the first six groups employers and employees were jointly represented, each nominating half of the members. It was hoped that the employers and the employees in each group would stand together. But in practice the united German trade union organization brought about the collaboration of the labour members of the various groups. Similarly, the employers as a class became united. The history of the German Economic Council illustrates the difficulties of functional representation. It is difficult to define the groups, assign number of representatives to each group equitably and to distribute individuals among the groups properly. The economic groups are not really antagonistic to one another but are inter-dependent. Besides these difficulties of division and assignment there are serious theoretical objections to functional representation.

Divisions among social classes are not mainly due to occupation. There are many important occupations which form distinct interests in relation to fundamental political questions. Every group is equally interested in the preservation of peace and order, and in the promotion of health and culture. It is also pointed out by some writers that the legislative assemblies are chosen to represent the interests of the nation as a whole and not the special interests of particular classes. Functional representation will invite and sometimes force the citizens to consider first their particular interests and then to think of general interests. It will promote struggle between the different interests and forces. A legislative assembly composed of so many different elements will tend to become more a debating society than a law-making body.

It is admitted even by the political "pluralists" that the matters of common interests like defence, health and education should be conducted by the device of territorial representation, but they put up a strong case for making the authority federal in character. Their line of argument has thus been summed up by Coker: "A political theory that is realistic must recognise that the modern community is made up essentially of groups rather than of individuals, and the ordinary citizen can be organically linked with the community only through the various intermediate associations into which his more intimate interests naturally draw him. He can impress the stamp of his will and opinion only on those decisions that relate to matters he can understand and in the formulation of which he can collaborate with others with whom he feels some special bonds of vocational or cultural interest. The associations formed on these bonds, therefore, should become substantially autonomous in both policy and administration."

**Theoretical  
objections to  
functional  
representa-  
tion**

**Need of  
recognising  
vocational  
associations  
as autonom-  
ous bodies**

## VII. Relation of the member to his constituents.

The relation of the member to his constituents has been a subject of controversy in the past. One school holds that the member should be merely a delegate of his constituents and his function is simply to act as the mouthpiece of his voters. He is to seek the mandate of his constituents in every important matter. It was thought that the sovereignty of the people can be translated into practice in this way. The other school holds that the member is a representative, who is in accord with the general views of the constituency and who is chosen as a person eminently fitted by character and attainments to meet and consult with other representatives in the council of the nation on public affairs. He is not bound to consult his constituency at every step, but if any definite pledge has been given by him at the time of election, he is bound by honour to fulfil it. This theory of representation is held by the majority of writers on political science to-day. The electoral law of France and Austria, and the constitution of the Swiss Confederation declare that the members of legislature are representatives of the whole people and are not bound by propositions and instructions. A convention has grown in all other constitutions that the representative of a locality must consider himself not as representing his district, but as representing the nation.

Delegate or representative?

Bryce, however, holds that the present tendency in England is "to make the representative more distinctly a delegate than he is in France or Italy." Where the member is bound by the instruction or mandate of his constituency he becomes a delegate rather than a representative. A delegate is a spokesman of the party which holds the majority in the constituency and is bound, whatever may be his personal opinions on any question, to speak and vote as the majority commands him. The delegate theory of representation has been attacked by Lieber as "unwarranted, inconsistent and unconstitutional." Lord Brougham expresses the same view in the following words: "The peoples' power being transferred to the representative body for a limited time, the people are bound not to exercise their influence so as to control the conduct of their representatives, as a body on the several measures that come before them." If the member is to receive instruction from his constituency, there must be a permanent committee of the party from which he has been elected. A heterogeneous body of fifty or seventy thousand voters can not issue instructions. The system of issuing instructions to the member would result in increasing the control of local party committees, in making a cabinet even more powerful over its followers than what it is now, in reducing the value of parliamentary debate, and in deterring men of independent character from entering parliament. Moreover, the

Delegate theory

conditions which existed at the time of his election may change before the expiry of his term and he may find that the pledges he made before the election should not have been made, had he foreseen the change of conditions. He has the right to derive profit from what he learns from discussions in the legislature and from other sources of information and in the fuller knowledge of circumstances he may change his opinion. But he should, at the same time, maintain a sort of decent consistency in his conduct. If he had been elected as a Free trader, he should not go over to the side of Protection without consulting his constituency.

It is to be noted that in stating the objections to the delegate theory it has been assumed that the member will act not so much as the delegate of his particular constituency, but as the delegate of the party, to which he belongs. The problem of representation has taken a new aspect on account of growth of communication and of party organization. The mandate of a section or group is now important in the party councils and not in Parliament. The candidate before his election takes the pledge of submitting himself to party discipline. Such a system is necessary for keeping the party strong and united but its danger lies in making the party leaders tyrannical and in closing the door against the inventive new member or small minority. Laski raises an emphatic protest against the theory that a member is a mere delegate of his party. "A member", he writes, "is not the servant of a party in the majority in his constituency. He is elected to do the best he can in the light of his intelligence and his conscience. Were he merely a delegate instructed by a local caucus, he would cease to have either morals or personality."

New  
complexion  
of the  
problem

Protest of  
Burke and  
Laski  
against the  
delegate  
theory

Burke in his classical Bristol speech of 1774 put the case against the delegate theory in the following words. "It ought to be the happiness and glory of a representative to live in the strictest union, the closest correspondence and the most unreserved communication with his constituents. Their wishes ought to have great force with him ; their opinion high respect ; their business unremitted attention.....Your representative owes you not his industry only but his judgment ; and he betrays instead of serving you, if he sacrifices it to your opinion."

### VIII. The Problem of Minorities

Minorities may be broadly classified under two heads—racial or national, and political. Racial or national minorities are groups of individuals who are linked with one another by common ties of national or cultural consciousness, who look back to the glories of a common past, and live in a state dominated by another group with a larger numerical strength. They differ

from the majority group in race, religion or language, and look upon their peculiar cultural features, social institutions and religion as clear expression of their separate individuality. They apprehend that their distinctive culture may be destroyed by the majority group. The examples of such minorities were the Germans living in Poland and Czecho-Slovakia in the period between 1919 and 1939. Such minorities are conscious of their separate nationality. Political minorities, on the other hand, have got no separate national consciousness. They are really political parties with programme different from that of the party in majority. A National minority is permanent in character, while political minority is temporary in the sense that it may become one day the majority party and form the government of the country. National minorities flourish in heterogeneous states, while political minorities exist in homogeneous communities like England and France. The minority problem in India, however, is in many important respects different from that of national or political minorities in western countries.

National  
and  
Political  
minorities

As a result of the last Great War the nationality of many large groups of persons was changed. Some states were created in Central and Eastern Europe with fragments of many nationalities. Thus, in Poland there were 10 lakh Germans, 50 lakh Ruthenes, 15 lakh Ukrainians, 15 lakh White Russians, 2 lakh Great Russians, 1 lakh Lithuanians, 30,000 Czechs, and 30 lakh Jews. In Czecho-Slovakia there were 33 lakh Germans, nearly 6 lakh Ruthenes, 90 thousand Poles, 7 lakh Magyars and 20 lakh Slovaks. In Yugoslavia there were nearly 6 lakhs of Germans, 47 thousand Czechs, nearly 5 lakhs of Magyars, 35 lakh Croats, 10 lakh Slovenes, 70,000 Slovaks, 2 lakh Roumanians, 50 lakh Serbs, and 4 lakh Albanians. In Roumania there were 7 lakh Germans, 6 lakh Ukrainians, 16 lakh Magyars, 2 lakh Turks and nearly 10 lakh Jews. Turkey contains 20 thousand Bulgars, 65 thousand Armenians and 115 thousand Albanians. It would be a mistake, however, to think that the problem of minorities was acute only in the newly created states. Italy got from Austria the southern part of the province of Tyrol as far as the Brenner Pass containing 2 lakh Germans. She acquired under the Treaty of Rapallo from Yugo-Slavia the provinces of Rorizia-Gradisca, Trieste and Istria, containing 5 lakhs of Slovenes. The League of Nations sought to protect the rights of the minorities in the newly created small states by embodying these rights in the Peace Treaties. The nature of these rights may be seen from the following summary of the treaty with Poland.

- (1) Poland undertook to assure full and complete protection

of life and liberty of all inhabitants of Poland, without distinction of birth, nationality, language, race or religion.

Nature of  
minority  
rights as  
exemplified  
in the Polish  
Treaty

(2) All inhabitants of Poland are entitled to the free exercise, whether public or private, of any creed, religion, or belief, whose practices were not inconsistent with public order or public morals.

(3) Inhabitants of regions made part of Poland, under the arrangement which set up the state of Poland, were admitted to be Polish nationals without any formality. All persons of German, Austrian, Hungarian or Russian nationality, who were born in these territories, of parents habitually residing there, were to be admitted as Polish nationals.

(4) In Poland, all Polish nationals are equal before the law. All enjoy the same civil and political rights, irrespective of race, language or religion. Differences in religion do not prejudice any Polish national in matters relating to the enjoyment of civil or political rights, such as admission to public employment, functions and honours, or the exercise of any professions and industries.

(5) No restriction must be imposed on the full use, by any Polish national, of any language in private intercourse, in commerce, in religion, in the press, or in publications of any kind, or at public meetings. This does not debar the Polish government from having an official language of the state. But if such an official language is established, adequate facilities must be given to Polish nationals of other than Polish speech, to use their national language in speech or writing before the courts.

(6) Polish citizens belonging to racial, religious or linguistic minorities are assured the same treatment and security, in law and in fact, as all other Polish nationals; and particularly they have equal rights to establish and control at their own expense charitable, religious, and social institutions, schools and other educational establishments, along with the right to use their own language, and to exercise their religion freely therein.

(7) In the public educational system of Poland, both in town and country, wherever Polish nationals of other than Polish speech were to be found in considerable proportion, adequate facilities must be provided to ensure, that, in the primary schools, instruction is provided to the children of such Polish nationals through the medium of their own language. Polish language may, however, be made compulsory by government as a subject for instruction in these schools.

(8) Wherever in town and country, there is a considerable proportion of such Polish nationals, belonging to racial, religious or linguistic minorities, these minorities are assured a share in

the enjoyment and application of the money which may be provided out of public funds by the State, Municipal or other budgets for educational, religious, or charitable purposes.

These guarantees, on paper, seem to be quite satisfactory. But the difficulty lies in securing the rights in actual practice. The minorities were not given any legal personality in International Law. If there was any infraction of their rights the only remedy open to them was to induce some outside power or authority to take up their cause and draw the attention of the Council of the League of Nations. On the complaint by one of the signatory States to the Treaty, or a member of the Council of the League, the matter could be referred to the Permanent Court at the Hague "for an advisory opinion." The League had no real effective power to enforce its decision, even when it was convinced that a breach of minority rights had taken place. Many powers persisted in defying these guarantees, notably the Poles, who announced in 1934, that, they did not intend to accept the League interference in the treatment of the Ukrainians.

Defects  
of these  
guarantees

It has already been pointed out that the guarantees were applicable in the case of new or succession states only. Big states like Italy were not bound by such treaty rights. Italy followed the policy of Italianization in South Tyrol. The Lithuanian delegation to the League of Nations demanded that all the States should be asked to adhere to and accept a general Treaty for the protection of minorities. But objecting to this proposal the Dutch Senator, Baron Wittert Von Hoogland said: "The introduction into the laws of all countries of provisions protecting minorities would be enough to cause them to spring up where they were least expected, to provoke unrest among them, to cause them to pose as having been sacrificed, and generally to create an artificial agitation of which no one had up to the moment dreamed. It would be rather imaginary illness from which so many people think themselves suffering the moment they read a book on popular medicine."

Is it  
desirable to  
give guaran-  
tee to the  
minorities of  
each state?

The problem of minorities would remain a baffling one so long as the concepts of sovereign nation states and of majority rule would prevail. The notion of sovereign state stands in the way of effective protection of rights of minorities by an international organization. The majority under democratic form of government, usually put obstacles to the way of enjoying equal rights of work, and employment, self-realization or self-expression by minorities. Various schemes of representation have been suggested to guarantee the rights of minorities; but on examination,

A problem  
baffling all  
situations

they are all found defective. A radical change in mental horizon of all the people—the majority as well as the minority—seems to be the only possible solution of the problem.

## IX. Methods of Minority Representation

When the western writers talk of the problem of representation of minorities, they think of national and political minorities. They do not ever dream of suggesting separate electorate or joint electorate with reservation of seats, because they have got sense enough to understand that such devices are the surest ways of perpetuating class divisions and hostilities, and of destroying the very essence of democracy. In their discussion of the problem they assume that parties will be organised in a democratic country on national lines and some one party or coalition of parties or groups, commanding majority of votes in the constituencies will form the government. Some writers think that under such circumstances there should be a method of allowing a minority party to secure certain seats, in the Legislature in proportion to its numerical strength. "The importance of providing some representation for minorities," wrote Lecky, "is extremely great. When two-thirds of a constituency vote for one party, and one-third for the other, it is obviously just that the majority should have two-thirds and the minority one-third of the representation."

Various schemes and expedients have been designed to give representation to minority parties or groups. The most important method is known as Proportional Representation, and we shall discuss it in the next section. The other schemes are: Limited Vote plan, Cumulative method and Second ballot.

The "Limited Vote system" can be introduced only when three or more members are to be chosen from each constituency. If three members are to be elected, a voter is allowed to vote for two candidates, so that the minority is reasonably certain to elect one of the three members. But this can happen only when the minority is a large one. It used to prevail in Spain and Portugal.

According to the Cumulative method, an elector is allowed to cast as many votes as there are representatives to be chosen from a constituency, but he can cumulate them on one or more of the candidates. Suppose, three members are to be elected from one constituency, then a voter can cast all his three votes for one candidate. This method is superior to the 'Limited Vote' plan in

as much as it enables a small minority to elect at least one member by cumulating its votes on a single candidate. This system prevails in the election for the Lower House of the Illinois Legislature. It has also been adopted for plural-member territorial constituencies under the Government of India Act, 1935. But it leads to much wastage of votes, because a popular candidate will get many more votes than what are necessary to elect him. It may also give over-representation to minorities. But at any rate a weak party cannot be routed entirely as is possible in constituencies where the principle of bare majority is observed

According to the Second Ballot plan an absolute majority of votes cast in a constituency is necessary for election. In a single member constituency there may be three, or four, or five candidates. If none of these candidates secure an absolute majority, a second election is held with the two candidates who have secured the highest number of votes in the first election. The cost of a second election may be avoided by asking the voter to state his second preference, which is brought into effect, if, on the first count, no candidate gains an absolute majority. This system is prevalent in Australia for Commonwealth elections. But it can hardly ensure the election of a candidate of the minority party. It eliminates the least popular of three or more candidates, but it tends to increase the election expenses and offer undesirable temptations to bargaining and intrigue.

## X. Proportional Representation

Proportional Representation is a method of election which aims at securing a representative assembly reflecting with more or less mathematical exactness the various divisions or groups in the electorate. It seeks to remedy some of the defects of the method of election by simple majority in the single member constituency.

Functions  
and history  
of Proportional  
Representation

If in a particular area there are ten single member constituencies and in each of them 49 per cent of electors belong to one party and 51 per cent to another, the votes of minorities are thrown away, and all the seats are captured by the majority party. The 49 per cent of the population send to the Legislature not the members they wished to have, but the members they wished *not* to have. Under the Proportional system they can send four members out of ten. The idea of Proportional Representation appeared as early as 1793 in the French National Convention: but it got wide publicity in 1856, when Carl Andrae, the Danish Minister of Finance, published a scheme and the next year Thomas Hare, an Englishman, expounded it in a pamphlet



entitled '*The Machinery of Representation.*' Hare elaborated it in 1859 in his *Treatise on the Election of Representatives, Parliamentary and Municipal.* John Stuart Mill extolled the virtues of his scheme and called it one of "the very greatest improvements yet made in the theory and practice of government." The primary function of a representative assembly is to undertake social and economic legislation, which touches the everyday interests of different classes in society. It is the object of Proportional Representation to bring into the Representative assembly the various classes and groups in the community in rough proportion at least to their strength. It can be adopted only where there are multi-member constituencies. Under this system if a certain number of voters in a multi-member constituency can agree upon a candidate, the candidate may be elected. It was adopted in thirteen European states. The number of votes required for electing a candidate differed from state to state. In Austria it was 39,500; Belgium 40,000; Bulgaria 20,000; Czechoslovakia 45,400; Denmark 22,500; Finland 17,125; Germany 127,000; Ireland 20,000; Netherlands 70,800; Norway 17,650; Poland 61,200; Sweden 26,100; and in Switzerland 20,000. There are two chief variants of Proportional Representation—the single transferrable vote advocated by Thomas Hare and used in American cities and Irish Free State, and the List system widely used in Europe. More or less mixed plans are used in Belgium, Denmark, Netherlands, Norway, Sweden and Switzerland.

The single transferrable system provides for the election of representatives by general ticket, and allows each elector to vote for one candidate or for a limited number, and also permits him to indicate his second and third choices or preferences. Suppose, in a four-membered constituency, an elector is called upon to choose between ten candidates. The voter places beside four of the names of candidates the numbers, 1, 2, 3, 4 to express his preferences. The total number of valid votes is divided by the number of representatives to be chosen plus one and the quotient plus one is taken as the quota necessary to elect any candidate. If one lakh of voters actually voted in the election, then the quota would be  $\frac{100,000}{4+1} + 1 = 20,000 + 1 = 20,001$  votes. In the Andrae scheme the quota is obtained by dividing the number of valid ballot papers by the number of seats to be filled. In the present instance the quota under Andrae system would be 25,000 instead of 20,001. In counting the ballots, at first the first choices only are considered, and as soon as a candidate has received a number

of votes equal to the quota he is declared elected, and no more votes are counted for him. His surplus ballots are transferred to the next available choices. Then, if all the seats are not filled up owing to the fact that not a sufficient number of candidates reaches the quota, the other seats are filled by taking the second preferences of the voters who have already voted for the already successful candidate or candidates, who, therefore, do not require these votes ; then the third and so on until all the seats are filled up. The vote may be transferred in another way. If a sufficient number of candidates can not be brought up to the quota by transferring the surplus votes of the successful candidate or candidates to others, then the candidate with the lowest number is eliminated (or more than one if necessary) and his or their votes are added to others according to the preferences expressed, so that a voter may help to get his second, third or fourth choices in, though the candidate of his first choice fails to be elected.

According to the 'List system' each voter is allowed to cast as many votes as there are representatives to be chosen, and not simply mark the preferences as in the Hare system. Candidates offer themselves in combination in a list of ticket up to the number equal to the number of seats to be filled up. The average voter gives his vote to the whole list *en bloc*. The total vote cast by each party is then divided by the quota, and the result is the number of representatives to which each party is entitled. Suppose in a six-member constituency 78,000 voters have actually voted. Then the quota is 78,000, divided by six, plus one, that is 13,801. If now the result of election is as follows : Conservatives 30,000 ; Nationalists 26,000 ; Labour 13,000, Liberals 8000, Communists 1000, then the seats would be assigned thus : two to the Conservatives, two to the Nationalists, and one to the Labour party. There would be one seat still to be allotted, but as none of the other Lists has reached the quota, it would go to the List with the highest average, namely the Conservatives who would thus get three seats. In Belgium, Sweden, Denmark, Norway and Switzerland, where this method has been employed it has been found that it confers a slight advantage on the larger parties. The List system, in contrast to the Hare plan, gives a voter little or no direction in choosing particular candidates.

Racial and social minorities are permanent in character in the sense that they can never hope to grow into a majority. Where such minorities exist, the introduction of Proportional Representation is necessary to satisfy the larger minorities. They need an electoral system which assumes diversity rather than unity. It is pointed out by the opponents of Proportional Representation that the system of single trans-

Merits  
of the  
system

ferrable vote is much too complicated for the average voter to understand it and requires some amount of technical knowledge on the part of party organisers. But the exercise of the single transferrable vote is itself a sort of political education, as it is impossible for the elector to state his preference without serious reflection. Whatever complication there might exist in the system may be obviated by appointing skilled election officers. Another advantage of the system is that it prevents the election of one party with an overwhelming majority at a period of transition, when great changes are to be effected. Moreover, in a non-parliamentary system of government like that of Switzerland, such a system is desirable as a technique for securing popular representation. In such a country the main concern of the representative body is legislation, and therefore a multiple-party system does not seem to entail serious difficulties, while the adequate representation of all important groups in the community is in many respects desirable.

In a parliamentary country Proportional Representation tends greatly to increase the number of parties and thus makes the formation of legislative majority an extremely difficult task. As it would be difficult to create a homogeneous cabinet, there would be governmental instability. Another charge against it is that it encourages "minority thinking" and pernicious class legislation. Moreover, the enlargement of the electoral area destroys the personal contact between the member and his constituency. It strengthens the party organisation, since the more the constituency expands, the more effective becomes the necessity of wire-pulling. It increases, therefore, the power of the professional organiser in politics. Under the List system, since the whole country constitutes one constituency for election, the tendency of the parties to stick together for this all-important test of electoral strength would probably act as powerful deterrent to the development of minor parties. The List system, used in Poland, Italy and Germany has been responsible for the rise of Dictatorship in these countries.

Defects  
of the  
system

Communi-  
ties Classes  
and  
Interests  
regarded as  
minorities

## XI. Nature of Minority Problem in India

The minorities in India are neither national as in the new and succession states of Europe, nor political as in the homogeneous countries like England and France. The government of India Act of 1935 is based on the principle of safeguarding the interests of "communities, classes and interests." The word, minority, in India means anything from a "religious group", to a "class" or "interest." The minority communities are usually enumerated

as the Moslems, the Sikhs, the Depressed Classes, the British Commercial Community, the Anglo-Indians and the Indian Christians. There is no common basis of classification of these so-called minority communities, classes and interests.

The scientific classification of communities does not run on religious or on purely ethnic lines, but on lines of historical associations, of lasting identity of language, territory, economic life and psychology manifesting itself in the identity of culture. The historical communities in India are the Andhras, the Tamils, the Malayas, the Kanarese, the Gujeratis, the Sindhis, the Mahratis, the Rajputs, the Oriyas, the Bengalis, the Biharis, the Punjabis etc. In this sense the Moslems, the Anglo-Indians, and the Untouchables are not communities. The Moslems have no one common language. They speak Bengali, Punjabi, Hindi and Urdu according to the prevailing language of the place in which they reside. They do not live in any contiguous area and they have no common economic life, some belonging to the land-owning, some to cultivating, some to professional and some to artisan classes. The Anglo-Indians have no community of area. The Depressed Classes have no one single community of area or language. They belong to several communities, areas and languages. The same may be said of the Indian Christians. The Sikhs and the Europeans are really minority communities.

Are the minorities separate communities?

The 'interests' which have been given special representation are represented by landholders, organized commerce and industry, mining and planting, industrial labour, universities and the like. Everyone of these interests may claim to be a minority, though by virtue of their wealth and position all these interests, excepting industrial labour, can hold their own without any special representation.

The separate 'Interests'

The problem of minorities in India is mainly a communal problem, arising out of the agitation of professional classes, belonging to comparatively backward sections of Indian population, for a share in the government of the country. "The communal problem of India," observed the Nehru Committee, "is primarily the Hindu-Muslim problem."

The Hindu-Muslim party

Other communities have, however, latterly taken up an aggressive attitude and have demanded special rights and privileges. The Sikhs in the Punjab are an important and well-knit minority which cannot be ignored. Amongst the Hindus themselves there is occasional friction, especially in the South between Non-Brahmins and Brahmins. But essentially the problem is how to adjust the differences between the Hindus and Muslims."

## XII. History of Communal Representation

As the nature of minority problem is peculiar, the solution which was demanded by the so-called minority communities and conceded to by the government was also peculiar. The representation of minorities was not sought by the devices of Proportional Representation, Cumulative vote and Second ballot, but by creating separate electorate

Origin of  
separate  
representation

The idea of creating separate electorate originated with the Moslem deputation headed by the Aga Khan, which waited upon Lord Minto on October 1, 1906. On the assumption of his office as Viceroy and Governor-General of India on November 18, 1905, Lord Minto had appointed a committee out of his Council to consider a number of suggestions for concessions, including among other matters increased representation on the Indian and Provincial Legislative Councils. The Moslem professional classes, who had so long been backward, were uneasy about the share they would get in the new scheme of government. This uneasiness led them to urge upon the government the necessity of conceding separate representation. In reply to their address Lord Minto made the following announcement. "The pith of your address, as I understand it, is a claim that under any system of representation, whether it affects a Municipality or a District Board or a Legislative Council, in which it is proposed to introduce or increase an electoral organisation, the Muslim community should be represented as a community. You may point out that in many cases electoral bodies as now constituted cannot be expected to return a Muslim candidate, and that if by chance they did so, it could only be at the sacrifice of such a candidate's views to those of a majority opposed to his community whom he would in no way represent, and you justly claim that your position should be estimated, not only on your numerical strength, but in respect to the political importance of your community and the service it has rendered to the Empire." Thus the deputation received encouragement from the Government at the very inception of their agitation. The Hindu professional classes, however, vehemently opposed the

Opposition  
by the Hindu  
professional  
classes

scheme of separate representation. Thus, Maharaja Prodyot Kumar Tagore, Honorary Secretary, British Indian Association, wrote to the Secretary of the Government of Bengal: "The committee are opposed to creed legislation. If one religious class be favoured, members of all the prevailing religions in India would clamour for special representation. Already they understand that more than one religious community, has put in its claim." The Madras Landholders' Association in their letter to the Chief Secretary to the Government dated January 23, 1908, pointed out that the scheme

of representation of castes and creeds was open to grave objection in that it was calculated to accentuate differences which are fast losing their importance in secular affairs, and interfere with the growth of sentiment of unity among the people which was a necessary condition of progress. The Bombay Presidency Association characterised the scheme as a device to create a counterpoise to the influence of the educated class. But Mr.

Gokhale supported the scheme in a modified form. He observed in the Imperial Legislative Council on March 29, 1909 : "I think the most reasonable plan is first to throw open a substantial minimum of seats to election on a territorial basis in which all qualified to vote should take part without distinction of race or creed. And then supplementary elections should be held for minorities which numerically or otherwise are important enough to need special representation, and this should be confined to members of minorities only."

Gokhale  
supported  
it

Lord Morley supported the idea in an important speech on the India Councils Bills, 1909 in the House of Lords. He observed : "The Mohamedans demand three things.....They demand the election of their own representatives to these Councils in all the stages just as in Cyprus, where, I think, the Mohamedans vote by themselves. They have nine votes and non-

Precedents  
of  
Cyprus and  
Bohemia

Mohamedans have three or the other way about. So in Bohemia, where the Germans vote alone and have their own register. Therefore, we are not without a precedent and a parallel for the idea of a separate register. Secondly, they want a number of seats in excess of their numerical strength. These two demands we are quite ready and intend to meet in full. There is a third demand that, if there is a Hindu on the Viceroy's Executive Council.....there should be two Indian members of the Viceroy's Council and that one should be a Mohamedan. Well, as I told them and as I now tell Your Lordships, I see no chance whatever of meeting their views in that way to any extent at all." Thus the communal electorate was first introduced by the India Councils Act of 1909.

The Hindu professional classes became reconciled to the idea of communal representation in 1916, when the Congress made the Lucknow pact with the Muslim League. According to the Lucknow pact it was agreed that in the Punjab 50%, in Bengal 40%, in the U. P. 30%, in Bihar 25%, in Bombay 33%, and in the C. P. and Madras 15% of the Indian elected members should be Moslems. The joint report signed by Mr. Montague and Lord Chelmsford condemned the idea of separate electorate in principle, yet it recommended its retention. It stated : "The Mahomedans regard separate representation and communal electorate as their only adequate safeguards. But apart from a pledge which we

The  
Lucknow  
Pact

Montford  
Report

must honour until we are released from it, we are bound to see that the community secures proper representation in the new councils. How can we say to them that we regard the decision of 1909 as mistaken, that its retention is incompatible with progress towards responsible government, that its reversal will eventually be to their benefit, and that for these reasons we have decided to go back on it? Much as we regret the necessity, we are convinced that so far as the Mahomedans at all events are concerned, the present system must be maintained until conditions alter, even at the price of slower progress towards the realisation of a common citizenship. But we see no reason to set up communal representation for Mahomedans in any province where they form a majority of the voters." In the Joint Committee of both Houses of Parliament in 1919 Lord Selborne observed that the principle of proportional representation might be found particularly applicable to the circumstances of India and that its possibility should be examined by the Statutory Commission which would sit at the end of ten years.

The Statutory Commission in its report in 1930, did not substitute separate representation by proportionate representation.

It wrote: "India is a land of minorities. The spirit of toleration, which is only slowly making its way in

Western Europe, has made little progress in India. Members of minority communities have, unfortunately, only too much reason to fear that their rights and interests will be disregarded. The failure to realize, that the success of democratic system of government depends on the majority securing the acquiescence of the minority, is one of the greatest stumbling blocks in the way of rapid progress towards self-government in India. Many of those who came before us urged that the Indian constitution should contain definite guarantees for the rights of individuals in respect of the exercise of their religion, and a declaration of the equal rights of all citizens. We are aware that such provisions have been inserted in many constitutions, notably in those of the European states formed after the last War. Experience, however, has not shown them to be of any great practical value. Abstract declarations are useless, unless there exists the will and the means to make them effective. Until the spirit of tolerance is more widespread in India, and until there is evidence that minorities are prepared to trust to the sense of justice of the majority, we feel that there is, indeed, need for safeguards. But we consider that the only practical means of protecting the weaker or less numerous elements in the population is by the retention of an impartial power, residing in the Governor-General and the Governors of provinces, to be exercised for this purpose."

The next phase in the history of communal representation

opened in London at the Round Table Conference. The Sikhs, the Depressed classes, the Anglo-Indians, the Europeans, the Indian Christians and the Moslems all wanted separate representation. But the first and second sessions of the Round Table Conference were unable to arrive at any agreement on the number of seats to be given to the various communities in the Legislature and on the methods of election to those seats. Mr. Ramsay Macdonald, who was then at the head of the National Government, agreed to make his decision, in the nature of an award on these questions. The Award was published on the 16th August, 1932 and subsequently incorporated in the Government of India Act 1935, with certain modifications regarding the depressed classes. The Award made provision for the separate representation of the General male, General female, Moslem male, Moslem female, Europeans, Anglo-Indian male, Anglo-Indian female, Indian Christians male, Indian Christians female, Sikhs male, Sikhs female, Landholders, Depressed classes, Labour, Universities, Commerce-Industry-Mining-Planting European and Indian, and Backward areas. The Award thus recognised separate electorates, accorded weightage (i.e. larger number of seats than what is warranted by the number of their population) to certain communities, cut up the representative system in the country into a number of cross-divisions, mutually separated on the lines, not only of religion, but also of economic interests, and cultural differences.

The Communal Award granted separate electorate to the Depressed classes. Mahatma Gandhi took up a fast unto death to protest against this attempt at the disintegration of the Hindus. The Award in this respect was modified by the Poona Pact of 1932. By this Pact the Depressed class was given a greater number of seats than what was recommended by the Award, out of the seats classified as general seats in the Award. It was also agreed that for each seat reserved for the Depressed class in the general constituency, four candidates were to be elected by the Scheduled castes in each constituency; and the four persons elected in this primary election were to be the only candidates for the reserved seat.

### XIII. Merits and Defects of Communal Electorate

Communal electorate has become, for the time being, a normal feature of the Indian constitution. It is difficult to support it in any way. The peculiar circumstances of India, the intense jealousy among the professional classes of different communities, and the need of creating a sort of counterpoise to the nationalist-democratic sentiment of the country, have conspired to set up such a strange system. The



supporters of communal electorate argue that the bitterness of feeling existing between the Hindus and the Moslems makes it necessary to have communal electorates. They think that the minorities can feel a sense of security only when they get separate electorate. They further state that separate electorates minimize communalism. The opponents to the separate electorate point out that communal electorates have tainted public life with communalism and has been responsible for the riots. The Nehru Committee Report (1928) rightly stated : "Everybody knows that separate electorates are bad for the growth of a national spirit, but everybody perhaps does not realise equally well that separate electorates are still worse for a minority community. They make the majority wholly independent of the minority and its votes are usually hostile to it. Under separate electorates, therefore, the chances are that the minority will always have to face a hostile majority, which can always, by sheer force of numbers, override the wishes of the minority.....Separate electorates thus benefit the majority community. Extreme communalists flourish thereunder and the majority community, far from suffering actually benefits by them."

Communal electorate stands in the way of development of nationalism and common citizenship. Nothing can impair national solidarity more than the artificial division of the people into communal electorates. Communal electorate is anti-democratic, because it does not allow a voter to choose the best candidate in the constituency. A Hindu elector may find that a Moslem candidate is more deserving of his support than a Hindu candidate, yet he can not vote for him. Moreover, communal electorate keeps a minority always in a minority party and never allows it to be the majority party. It also hinders the growth of party system on sound modern lines. Another reason for the rejection of communal electorate has been stated by Sir Hari Singh Gour, who observed : "The Hindus complain that if the Muslims, who are undoubtedly a backward community are given an undue proportion of political power, they might act as a drag on the political progress of India and that it is a political heresy to permit a backward community to rule or materially retard the policy of an advanced community." The greatest objection to the communal electorate is that it spreads the quarrel between the professional classes to the toiling masses. Separate electorate may be, and has been, of some advantage to the professional classes in securing a few more jobs at the cost of other communities, but it has failed to render any tangible good to the peasants and artisans. Moreover, the logical corollary to communal electorate is the division of India into Pakistan, Hindustan, Sikhistan, Anglo-Indiastan, etc.

Mahatma Gandhi suggested that the electoral circles should be

**Defects of  
the system**

so determined "as to enable every community to secure its proportionate share in the Legislature." This may be secured by the introduction of Proportional Representation. We have seen that the Proportional Representation, too, is faulty in many respects. But is is much better than communal representation in the sense that under the latter the segregation of groups is so complete that national feeling can not grow at all. Proportional representation allows much greater freedom of choice to the electors. It does not disrupt and vivisection the nation as the separate electorate does. It enables the minorities to secure proportionate representation without sacrificing national outlook.

Proportion-  
al Represen-  
tation  
vs.  
Communal  
Electorate

## CHAPTER XV.

### THE EXECUTIVE—POLITICAL

#### 1. Principles of organisation of the Executive

The term executive is used in two senses. In the broader sense of the term, it signifies the entire staff of officials, high and low which are concerned with the administration of public affairs. It means the whole body of the civil service, of the police, and even the armed forces. In the narrower sense, it signifies the supreme head or heads of the executive department. It is with the executive in this latter sense that we shall be concerned in this chapter.

In considering the nature of the executive we must not be misled by mere nomenclature. We must bear in mind the distinction between the nominal and the real executive. The government of Great Britain is carried on in the name of the King, but the real executive power is vested in the ministry. In France, the head of the executive is the President, but the executive authority is really exercised by the French Cabinet.

Historical experience has established certain broad principles on which the executive should be organised. The essential condition of the success of executive power is the unity of organisation. The executive is required to take prompt action in many affairs. If there are many councillors with co-ordinate power, much time shall have to be spent in discussion. The proper function of the executive is not deliberation but to carry out the state-will as expressed by the Legislature. Moreover, secrecy is often necessary in governmental business, but a large body of executive is incapable of maintaining secrecy. In every modern state, except Switzerland, the final executive authority is vested in one person. In the U. S. A. the supreme executive authority is the President; in England the Prime Minister. The supreme authority, however, delegates and distributes a large power to subordinate authorities. He may have an executive council to help and advise him. But if the councillors have the power to outvote him, there would be no unity of organisation.

The executive must be vested with sufficient power so as to enable him to maintain peace and order within the country,

and to defend the people against external attacks. Wherever the Legislature had kept the Executive weak, chaos and anarchy had invariably followed. The French suffered much owing to the weakness of the executive in 1791—92. Hamilton justly observes that a feeble Executive implies a feeble government and is but another name for bad government.

The Executive ought to possess adequate power

Though it is necessary to make the executive strong, yet it should not be too strong, lest it should flout public opinion and tyrannize over the people. The executive must be so organised as to make it dependent on the support of the people. In England, the cabinet with the majority in Parliament at its back can indeed do whatever it likes, but the fear of facing the electorate in the next election forces the ministers to keep their hand on the pulse of the nation.

Indirect popular control over the Executive

The executive should have sufficiently long duration of power to make it interested in the administration of the country. A very short term of office of the executive leads to "an intolerable vacillation and imbecility." Moreover, short tenures necessitate a frequent recurrence of elections, which disturb the normal life of the nation. Hence, the practice of the election of the President of the United States for four years has much to command in it. In states having the cabinet system of government, the executive retains in a power so long as it can command the support of the Legislature. In France, frequent changes in the cabinet have led to much political disturbance.

The Executive head must not be changed frequently

Considering all these points, we cannot but admire the wisdom of Hamilton, who observed :—"The ingredients which constitute energy in the executive are,—first, unity ; secondly, duration ; thirdly, an adequate provision for its support ; fourthly, competent powers. While those which constitute safety in the republican sense are, first a due dependence on the people, secondly, a due responsibility "

Four requisites

## II. Classification of the Executive

According to the mode of choice, executives may be divided into three classes—hereditary, elected and nominated. But Dictatorship forms a class by itself.

The hereditary executive seems to be no longer in keeping with the spirit of democratic government. In England, Italy and Belgium hereditary monarchy has been retained, indeed, as an integral part of the political institutions, but the

monarchs of these states are nominal rather than actual heads of the executive. The institution of titular monarchy "tends to introduce into the administration of the government elements of stability, permanence, continuity, and experience and in the relations of the state with foreign power it tends to add a certain prestige which is not without weight in diplomatic intercourse" But in spite of its advantages, it is looked upon as a survival of a past age. The last Great War has swept away the autocratic monarchies of Russia, Germany, Austria and Turkey. The only big state where the monarch still retains some amount of actual power is Japan.

Hereditary executives

Elected executives

Elected executives may be classified under three heads—those which are directly elected by the people; those indirectly elected by a body of intermediate electors; and those elected by the Legislature

Direct popular election of the executive prevails in a number of South American Republics and in the states of the United States. The president of the U. S. A. is in practice elected by popular election, though the Constitution provides for the election by an intermediate body of electors. The advantages

Direct election is not suited for a big state

claimed for direct popular election are, that it creates an interest in public affairs on the part of the masses and secures the election of a chief magistrate in whose ability and integrity the people have confidence.

But the disadvantages of the system are many. First, it is not possible for the citizens to know much about the candidate, if the electoral area be a large one. Secondly, the elective system breeds intrigue and corruption and throws the whole machinery of government out of gear just before the election. Thirdly, party feeling is accentuated and in South America it not unoften leads to bloodshed. Moreover, it opens the way to intrigues and intervention by foreign Powers

Indirect election of the executive through an electoral college is employed in the Argentine Republic, Chile, Mexico and some other Latin American Republics. Such a system was also adopted in the United States, but the electors of the Presidential election now vote as members of a party, and as such they have turned the indirect election into a direct one. This is the danger to which this method is peculiarly liable.

Indirect election may lead to direct election

Election of the executive head by the Legislature is a type of indirect election. This method is followed in France and Switzerland in the election of the President. The merits of the system are, that the members of the Legislature are likely

to make a wiser selection than the masses, and that there would be close correspondence between the executive and the legislature. In countries with parliamentary executive, the cabinet is the indirect choice of the legislature. American writers, to whom the independence of the executive is a first principle, object to this method on the ground that it will impair the independence of the executive, and make him subservient to the will of the legislature. They also point out that as the legislature is concerned with law-making, it should not assume such an important function as the election of the executive.

Election by the legislature ensure democratic control

Executive heads are nominated by the British Government to all the subordinate governments in the British Empire. In independent states, if any authority enjoys the power of nominating the executive, that authority becomes the supreme executive and not the nominated one.

Nominated Executive

From the discussions on the mode of choosing the executive it will be evident that the classification of the executive into hereditary, elected and nominated is not a satisfactory one. The hereditary executive is invariably the nominal head of the government; some of the elected executive heads, as the French President, is also the nominal head; even amongst the nominated executives, the Governors-General of the British Dominions are nominal heads. But as students of political constitutions we are more concerned with the real executive than the nominal. The only satisfactory basis of classification of the executive is the relation of the executive with the legislature—whether it is under the control of Parliament or not.

Illusory basis of classification

### III. Types of Parliamentary Executive

#### Comparison between the English and the French Cabinet

Both in England and in France the real executive is the cabinet, with a Prime Minister at its head, which is responsible to the elected Chambers. But in several important respects, the French Cabinet is different from the English Cabinet. The Premier in France enjoys far less power than his counterpart in Britain. The French Premier can indeed appoint and dismiss ministers, but he must be very cautious in the exercise of his powers. He has to depend upon the support of a coalition of a few groups and cannot afford to displease any. There is no party strong enough to form a majority in the Chambers. Consequently, crises are frequent in the French Cabinet. In Britain, a cabinet crisis is usually followed by a dissolution and fresh election;

Divergence due to difference in party system

but in recent years crises have become rare in the English Cabinet. But in France, dissolution of the legislature before the expiry of its statutory term of four years is extremely rare. When a ministry resigns, merely a re-grouping takes place in order to obtain the support of a majority in the Chamber. In England, a member of the cabinet which has just been driven out of power very seldom accepts post in the cabinet of the rival party. But in France, we frequently find a politician who held a portfolio in the cabinet just resigned taking up another in the new one. The cabinet in England is formed on some party principles, but in France it is maintained by the distribution of government favours. The average life of a French Cabinet since the foundation of the Third Republic has been only ten months, while an English Cabinet lasts usually for more than three years. In England, theory of collective responsibility of ministers to Parliament has long been established ; in France, the Constitution provides that ministers shall be collectively responsible to the Chambers for the general policy of the government and individually for their personal acts. But in practice the French Cabinet stands or falls together.

Collective  
responsibility

### Contrast between the French and German Cabinets

After the last War many states adopted the cabinet system. Of these the most important was Germany. The German Cabinet differed from the French Cabinet in many respects. The French Premier is bound to consult his colleagues in formulating the general policy, and makes large concessions to them in order to secure their adherence. The German Chancellor (Prime Minister) enjoyed far greater power. The German Constitution laid down that, "the Chancellor of the Federation determines the main lines of policy for which he is responsible to the Reichstag. Within these main lines each federal minister directs independently the department entrusted to him for which he is personally responsible to the Reichstag." Thus, unlike the French and English premiers, the German Chancellor was solely responsible for the general policy of the Cabinet. Another remarkable point of departure from the principle of the English and the French Cabinet system is to be found in the fact that in the German Cabinet an individual minister was liable to be called upon to resign. "The Chancellor of the Federation and the federal ministers require for the administration of their office the confidence of the Reichstag. Any one of them must resign, should the confidence of the House be withdrawn by an express resolution." Cabinets in Germany were as unstable as those of France. But while the French Cabinets

The German  
Chancellor  
has got far  
more power  
than the  
French  
premier

have fallen very often merely for personal conflicts the German Cabinets fell mainly for difference of opinion in foreign policy. Within twelve years no less than four cabinets had to resign for this reason. Political parties in Germany were far more strongly organised and disciplined than those in France. At present the Nazi party has acquired complete ascendancy in Germany. This has contributed to the stability of the executive in Germany.

The Nazi  
rule in  
Germany

In Australia, a federal ministry is deliberately elected by the Lower House. If this House withdraws its confidence from the minister or the ministry as a whole, he or it must immediately resign and a new ministerial election takes place. The constitution of Czechoslovakia contained some provisions for imparting stability to the parliamentary executive. These provisions stated that a vote of 'no confidence' in the Ministry by the Chamber of Deputies would be valid only when more than half the members were present, if there was a 50 per cent majority and if the vote was taken by roll call. Further, such a motion for a vote of "no confidence" must be signed by not less than a hundred deputies before it was introduced.

The Australian cabinet

#### IV. Contrast between the American and the French President

"There is," wrote Sir Henry Maine, "no living functionary who occupies a more pitiable position than a French President. The old Kings of France reigned and governed. The constitutional king, according to M. Thiers, reigns, but does not govern. The President of the United States governs, but he does not reign. It has been reserved for the President of the French Republic neither to reign, nor yet to govern." Though this statement is couched in hyperbolic language, yet it is substantially true.

Weakness  
of the  
French  
President

The French President is elected for seven years not by the people but by the two Houses of the French Parliament sitting together as a National Assembly at Versailles. He can be re-elected, though a re-election has been rare. The President of the United States is now popularly elected, though the intention of the Fathers of the constitution was to secure indirect election through an electoral college. He is elected for four years, and can be re-elected. He can be impeached by the House of Representatives for "treason, bribery or other high crimes." The trial is held by the Senate, where a two-third majority is required for conviction. The French President can

The American President is elected by the people and is therefore more powerful



be impeached for treason only, but a simple majority is sufficient for convicting him.

The French President has a formidable array of powers on paper only. He can not act in any executive matter except through his Ministers, who must, by the constitution, countersign every decree. One writer has humorously pointed out that only his letter of resignation and his letter thanking the Assembly for his appointment do not require the countersignature of a minister. There is, indeed, a Council of Ministry of which the President is head, but as this Council is responsible to the Chambers it becomes a Cabinet Council of which the Prime Minister is the head. This fact explains the cause of his weakness. Another cause which has contributed to his weakness is his election by the Legislature, and not by the people. As he owes his position to the Legislature he cannot act independently against it. The powers of the President of the U. S. A. are very real, though the exercise of them varies greatly with the personality of the President, and in times of crises they can become greater still. He is the real head of the executive. The members of his cabinet are appointed by him and responsible to him, and not to the Legislature. He sees to the proper execution of the laws, appoints judges, ambassadors and other high officials of the state with the consent of the senate, and can remove any officer from his post.

Both the American and the French Presidents enjoy considerable power in foreign affairs. Both are the commanders-in-chief of the army, navy and air forces of their respective countries. Both represent their respective states in the sending and receiving of ambassadors, ministers and in the negotiation and conclusion of treaties. Minor treaties can be concluded by both the Presidents without consulting the Legislature. The Power to declare war belongs to the Legislature in both the countries, but in both the cases executive action may bring negotiation to such a pass as to make war almost inevitable. But it must be noted that in times of civil and foreign wars the American President becomes the virtual dictator of the nation. The constitution empowers him to do everything necessary for overcoming the enemy. During the Great War, President Wilson obtained and used powers concerning almost every aspect of national life.

The President of the French Republic has got the power to summon, adjourn and prorogue the Houses. He can adjourn the chambers at any time, though not for a period exceeding a month, nor for more than twice in a session. He

Causes of  
weakness of  
the French  
President

The U. S. A.  
President  
may become  
a Dictator  
in critical  
times

has the theoretical right to dissolve the Chamber of Deputies, but he has not exercised it since 1877. Similarly, he has got a suspensive veto, which he has never used. The President of the U. S. A. does not possess the power to summon or adjourn the Congress. He or his ministers cannot take part in the business of the Congress, but the President can get a member of the Congress, to embody his ideas on a certain subject in a bill. He can influence the Legislature by his Annual Message, which he himself or his deputy reads before the Congress. After a bill has been passed through both the Houses, it cannot become law until the President signs it. If he vetoes the bill, it must be passed in each House by a clear two-thirds majority before it can be enacted

The powers of the French President are more or less theoretical

In conclusion it may be observed that the position of the French President resembles more that of the King of England than of the President of the U. S. A. He has been called "a constitutional king for seven years." Though he does not enjoy anything like the prestige of the English monarch, yet in two respects he exercises greater power. Owing to the existence of a large number of groups in the French Legislature all ministers are formed by coalition. The President takes a leading role in the formation of each coalition and he wields a considerable influence in the selection of ministers. Moreover, the king in England is debarred by convention from attending any council of ministers, but the French President presides over the Council of ministers which often meets to deliberate over matters of general policy.

The French President is like a constitutional king

## V. Comparison between the American President and the English Premier

In the modern world the two most powerful functionaries of Government are the President of the United States and the Prime Minister of England. The President is directly elected by the people for a term of four years. He can not be removed from office during these years. The English Premier is the indirect choice of the people. The electorate puts him in office by voting for the party headed by him. He retains his position only so long as he commands the majority in the Legislature. The President is more definitely the Head of the Nation than the Prime Minister. "The eyes of the whole people," says Bryce, "are fixed upon him even if he be a man of less than first-rate quality, whereas in Parliamentary countries

The English Premier is nominated by the king

The President attracts greater attention

it is only striking personalities such as Pitt or Cavour or Bismark that excite a similar interest and exert a similar authority."

The American President is the head of the executive department only. The Prime Minister is not only the head of the executive but also the leader of the Legislature. If the majority in the Congress belong to the party opposed to that of the President, it is just possible that the President might not get those bills enacted which he thinks necessary for efficient administration. The power of the Prime Minister over taxation is much greater than that of the President, who may not get the money needed for carrying out any policy which the Congress disapproves.

The Premier is the head of the Legislature as well

The sphere of action of the President is much more restricted than that of the Premier. But within that narrow sphere the President is absolute. He need not consult his cabinet nor regard its advice as the Prime Minister must. He is the master of his cabinet; but the Prime Minister is only the chief of his colleagues in the cabinet. Sir Sidney Low asserts that the English Prime Minister is more powerful than the American President as he directs and controls all the forces of the state and through his predominant influence in the Legislature can create, alter and repeal laws, and can impose taxation which the American President can not. But this statement is true only when the Prime Minister has a solid majority at his back. President Roosevelt is certainly much more powerful than Mr. Churchill.

The President has greater control over his cabinet

## VI. The Swiss Executive—A Type by itself

We have discussed above the two types of the Executive which are generally found in democratic states. But the Swiss Constitution presents an example of a type peculiar to itself.

The collegiate type of Executive

This type has been called the collegiate system. Its peculiarities will be fully discussed in the chapter on the Swiss Constitution. Here we may quote an observation of Bryce to show the necessity of studying it closely.

"It would be hard to introduce such a system in any country where the passing of laws has been long associated with party strife, and where the distrust of opponents, intensified in our days by class sentiment, makes each side suspect whatever proceeds from the other; but since alike in France, in America, and in England the constitutional machinery that exists for investigating, preparing, and enacting legislation on economic and industrial topics has failed to give satisfaction, light upon the problem of improving that machinery ought to be sought in every quarter."

Merits of the Swiss Executive

## VII. The Executive Powers

The executive powers in the normal constitutional state to-day may be classified as follows.

- (i) Diplomatic power—which relates to the conduct of foreign affairs. Powers of the Executive
- (ii) Administrative power—which relates to the execution of the laws and the administration of the government
- (iii) Judicial power—which relates to the granting of pardons, reprieves, etc., to those of crime.
- (iv) Military powers—which relates to the organisation of the formed forces and the conduct of war
- (v) Legislative power—which relates to the drafting of bills and directing their passage into law.

The diplomatic or treaty-making power is neither purely executive nor purely legislative. In the United States the executive makes negotiations, which are to be ratified with or without amendment by the senate. The House of Representatives exercises an indirect control through its right to give or withhold its consent to legislation which may be necessary to carry out a treaty. In Great Britain the power of diplomatic negotiations is exclusively in the hands of the executive. Parliament only makes laws to perfect the treaty or carry it into effect. In France the Chambers can not modify or amend treaties submitted for their consideration and must approve or reject them as a whole. In all states the executive appoints and receives diplomatic representatives. Extent of diplomatic power is different in different states

The executive directs and supervises the execution of the laws in all states. The head of the executive can appoint, control and remove all his subordinates. Within the field of civil administration lies also the power of issuing regulations or ordinances in matters which have not been dealt with by the Legislature. Control over appointments

The French make a distinction between the political or governmental functions and the purely administrative functions of the executive. The political functions include such matters as the summoning and opening of the legislative chambers, the conduct of foreign relations, the disposition of military forces, the exercise of the rights of pardon, etc. "The administrative authority, on the other hand, embraces all those matters which have to do more directly with the strict administration of the government, such as the appointment, direction, and removal of officers; the issue of instructions; and Administrative functions

ordinances; and, in general, all acts relating more directly to the execution of the laws.

The executive controls in every state the army, navy and air forces. The pardoning power belongs to the executive in all states. "One man" says Hamilton, "appears to be a more eligible dispenser of the mercy of government than a body of men."

Military powers

### VIII. Relation between the Executive and the Legislature

It has been shown in the chapter on the Separation of Powers, that there can be no absolute separation between the executive and the legislature. The executive exercises some legislative powers such as the right of assembling, dissolving and adjourning the legislature in many states.

Legislative powers of the Executive

In all the constitutional states the executive has some kind of veto power. Everywhere it initiates legislation either directly as in Parliamentary countries or indirectly through Annual Message in Presidential form of government. Usually the legislative functions of the executive are regulated by state rule or common law. On the other hand, the executive is controlled to a lesser or greater extent in every state by the legislature

The Legislature controls the Executive

### IX. Veto Power and its utility

The veto power of the executive requires some elucidation, as it is the most important legislative power of the executive. The veto power means the power of the executive to disapprove acts of the legislature. The chief objects of the veto are "to prevent hasty and ill-considered action by the legislature" (Garner). Lord Bryce points out that in the United States the veto of the President in federal legislation and of the State Governor in state legislation is valued as curbing the tendency of legislature to pass faulty measures either from a demagogic purpose to carry favour with some large section of the citizens, or at the bidding of powerful business interests which can get at the individual representatives or at the local party leaders who command a majority in the legislature.

Objects of Veto power

There are three forms of the Veto—absolute, qualified and suspensive. The veto power is absolute where the legislature can not overcome it by any process whatsoever. Such a veto belongs to the king of Great Britain in constitutional theory only. The British Crown virtually parted with its right of dissent from the Houses two centuries ago. The Governor-General of India exercises absolute veto.

Three types of Veto Powers

A veto is called qualified where it may be overridden by the legislature, provided an extraordinary majority of the members, usually two-thirds, concur in repassing the measures disapproved. The President of the United States possesses such a veto power. The suspensive veto is that which compels the legislature to reconsider the measures passed by it and disapproved by the President. In France, if the President sends back any measure to the Legislature, its members can make it a valid law by passing it by an ordinary majority.

Qualified  
veto

Suspensive  
veto

## X. Increase in the Power of the Executive in Modern Democratic States

Increase of the power of the executive authority at the expense of the legislative body and sometimes of the judiciary is the characteristic feature of the politics of the twentieth century democracy. As early as 1922, when the dictatorial governments had not been formed, Lord Bryce observed in his *Modern Democracies* the "growing disposition to trust one man, or a few led by one, rather than an elected assembly." The chief reasons for the increase of the power of the executive are the quantitative increase in the functions of government and the importance of economic questions, which can be dealt with thoroughly either by the legislature or by the public in general. The State, which previously had regarded as its main task the provision of internal and external defence, the administration of justice, and the maintenance of the army and police system, had to undertake a constantly increasing number of other duties on account of the development of industries. Building roads, bridges and railways, the development of communications, provision for schools, museums, and research institutes were undertaken by the State. With a view to improve human and animal hygiene, medical and preventive measures were introduced, and hospitals and Public Health Departments were set up. Various measures have to be adopted for the development of agriculture, forestry, fishery and animal breeding. Extremely difficult tasks like the regulation of river and inundation areas, the augmentation of fertile areas, the testing of seeds, marketing the agricultural produce, making trade agreements with foreign countries, regulation of currency, credit and prices, have been taken up by the State. All these tasks belong to the sphere of the executive. The problems involved in these tasks are concerned with technical economic questions. The general public are not fitted to deal with such questions.

Extension  
of the  
sphere of  
governmental  
activity

The Legislature is over-burdened with work. The initiative in making the laws has to be taken by the government. Measures not favoured by government have little chance of being passed, because the vast mass of legislation introduced by the government in every session requires the whole time of the Legislature. The Legislature finds no time to lay down, nor is it competent to deal with, the intricate details regarding the measures it passes. It empowers the government departments to issue rules and regulations which are binding on citizens. Thus, in England the Factory Act of 1937 gives power to the Minister of Health to make special regulations for any industry he may think fit. The Town planning Act of 1925 gives power to the Minister to decide whether or not land is likely to be used as building land ; and he has been made the final Judge in any dispute over whether "any building or work contravenes a town planning scheme." In 1935 the government of Belgium was granted power to issue decree laws, not requiring the consent of the Legislature to deal with the economic situation.

Another cause of the growth of the execution is the increasing rigour of party discipline over the members. If the government is to be efficiently carried on through the system of opposed parties, the party leaders must be able to depend on the votes of their followers. The leaders of the majority party or the coalition party form the government and they generally pass measures which they think proper.

The tendency to the increase of power of the executive is noticeable not only in parliamentary governments but also in the Presidential government of the U. S. A. There has been a steady growth of the power of the President since the election of Roosevelt in 1933. His attempt to modify the legal checks which the American constitution has placed on the power of the President is a clear example of the modern tendency to extend the power of the executive. The power of the central government too, has grown at the expense of the States. The facility of communication has tended to destroy the basis of separation of the different states. The policy of President Roosevelt to accept responsibility for economic conditions and to use the whole resources of the nation to cure the depression cuts across State rights and remove large areas of administration from State control.

Thus the relations between the executive, legislature and judiciary which were co-ordinated and in balance in the nineteenth century have lost the equilibrium in the twentieth century. During the war the power of the executive is all the more pronounced. The strategy

Power of the executive to make rules and regulations

Rigours of party discipline

Growth of the power of the President in the U. S. A.

Loss of equilibrium among the three powers

and the plans of action in dealing with the enemy are in the hands of the cabinet and the army leaders.

## XI. Executive authority in Dictatorial States

Modern Dictatorship means the centralization of government in the hands of a single man. In theory, he is absolute, and is restrained by no legal and constitutional rules. The Legislature is packed with the members of the party of the Dictator. Election to the Legislature degenerates into a farce. It merely demonstrates the fact that the government has the approval and co-operation of the people. None but a member of the party is allowed to stand as a candidate. Citizens, who have served a period of probation are accepted as members of the party. Members of the party are required to conform to strict political orthodoxy. In Russia the party cell exercises the strictest supervision over the private life of every member, giving him advice even in matters like love affairs and his clothes. The dictator controls his party in a more personal and a closer degree than he can control the general administration. The party is the effective instrument of controlling the Legislature.

Judiciary has also been subordinated to the executive in the Dictatorial states. As the independence of the Judiciary is the corner stone of democratic government, so the control of justice is an essential safeguard of dictatorship. Control is exercised by the creation of a special court for trying political offences, by the power to appoint and dismiss judges and by creating the post of lay assistants to help the judge, even in non-political cases. This third method has been specially adopted in Italy, Russia and Germany. These assistants are naturally persons particularly attached to the regime.

In the Dictatorial states the ministers are responsible to the Head of the state. The institution of ministerial counter-signature which secures the responsibility of ministers to Parliament is unknown in Dictatorial states. The whole administrative machinery is controlled and directed by the Dictator. Mussolini has taken up the portfolio of almost all the important departments of the State. He has reduced the Ministers to the position of clerks. Dictatorship gains in strength and efficiency by the centralization of authority but the death of the first Dictator or his conspicuous failure in any direction brings chaos and confusion in the state.

Subordination of the Legislature

Control over Judiciary

Ministers reduced to the position of clerks



## CHAPTER XVI

### THE EXECUTIVE—ADMINISTRATIVE

#### I. Principles of Organization of Administration

In every state the government has to perform two sets of functions—political and administrative. The political function of the government in democratic countries is to frame and formulate policy, to secure public opinion for it, and to maintain its own party in power against the incessant onslaught of its opposing parties. In Dictatorial countries the political function of the government is to further, direct, control, enhance and develop all actions which contribute to the realization of national aims. The administrative function of the government is the co-ordination and control of the administration of the state. The quantitative and qualitative increase in the function of the state has made the problem of administration a difficult one. Many of the operations of public administration have recently become distinctly technical or economic in character similar to those performed by large-scale enterprises under private control. Consequently, the problems of administrative organization have become subjects of scientific study.

Laski holds that in organizing the administrative departments five principles should be observed. First, a minister should be placed at the head of each department and he is to be responsible to the Legislature for the work of his particular department. If a board is set up to look after the department, responsibility for the errors and credit for the good work can not be easily fastened on any one. If one man is in charge of the department, the Legislature can ask him to explain why a particular step was considered necessary.

The second principle is that there should be adequate financial supervision over each department. An officer, second in importance to the permanent head of the department should be responsible for all payments made by the department and for making a close examination of the cost of carrying out the proposals made by the department. This is secured in England by the Treasury. The Treasury is divided into eleven divisions and three branches and the duties are distributed among them in the following manner: *First Division* : Internal Finance, including internal debt, loans, banking, currency and coinage, revenues, parliamentary financial procedure. Attached to this Division are the Treasury Officers of

Importance  
of  
Administra-  
tion

Responsible  
Minister

Financial  
scrutiny and  
organiza-  
tion of  
British  
Treasury

Accounts who act in a consultative capacity on all questions relating to accounting principles and methods. *Second Division* : Foreign Finance, including external debt, reparations, foreign and colonial currencies. The *Financial Inquiries Division* investigates into economic and financial questions. *Third Division* . Social Services etc., including Housing, Health, Labour, Pensions, Police, Transport. *Fourth Division* . Education, Arts and Science, Trade, Agriculture, Fisheries etc. *Fifth Division* . Material and Policy questions relating to the Navy, Army, and Air force, Foreign, Dominion and Colonial services, etc. *Sixth Division* : The superannuation of Civil Servants, compensation for injuries, etc. *Seventh Division* . General questions affecting the Civil Service, except superannuation. *Eighth Division* . Personal questions relating to the Navy, Army and Air force, including Civilian personnel employed by these departments. *Ninth Division* : Establishment questions relating to the Post Office, Stationery office, Office of works ; services carried out by these departments ; Industrial wages etc. *Tenth Division* . Establishment questions relating to Colonial office, Dominions office, Foreign office and the services carried out by these Departments. Home office, Inland Revenue department, Ministry of Labour, Ministry of Transport, and certain other departments. All questions relating to Museums and like Institutions are also dealt with by this Division. *Eleventh Division* . Establishment questions relating to the departments responsible for Agriculture and Health, Board of Trade and certain other departments. All questions relating to Legal departments. Outside the division organization are the following branches. (1) The Accounts Branch, which is an executive accounting section under an Accountant and Deputy Accountant. (2) The Investigation Branch, which consists of three officers who conduct investigations in connection with the simplification of office methods and processes, and the introduction of office machinery and labour-saving devices, throughout the Public Service. (3) The Chief Clerk's Branch, which is responsible for the clerical, registration, minor administrative and messengerial duties connected with the departments.

The third principle in the organization of departments is the need of associating members of the Legislative Assembly with the actual administration of the country. This may be secured by appointing a committee of members of the <sup>Committee</sup> Legislature for each ministry. The members of the <sub>system</sub> committee should possess some specialized knowledge of the department concerned. The committee is not to initiate policy, nor to prevent the introduction of legislation proposed by the ministry, but to scrutinise, warn and encourage the work of the department. Such committees ensure a greater responsiveness on the part of the executive to the opinions of the Legislature,

prevent the minister from becoming a dictator, and bring his official staff into contact with the outside world and thereby prevent the typical errors of bureaucratic government from being committed.

Fourthly, there should be definite arrangement for co-operation between the different departments. Government is an organic whole ; it can not be divided into water-tight compartments. Organization into different departments is necessary for bringing specialised knowledge to bear upon administrative problems, but that does not mean the total separation of one from others. The need of continuous consultation between the Board of Trade and the Ministry of Labour, between the Department of Overseas Trade and the Foreign office is very great. In the Provincial governments of India there is a deplorable lack of co-operation between the different departments. The welfare of villages depend on the concerted action of the Agriculture, Industries, Co-operative movement, Irrigation, Veterinary, Medical, Education, and Public Health departments, but there is no means for bringing them together at present.

The fifth principle is that there should be a special department for research and inquiry into administrative problems. Such a department should plan out the lines of possible policy and collect the facts needed to develop those lines in all their relationship. Henry Fyrol in his memorable paper entitled "The Administrative Doctrine in the State," lays special emphasis on the importance of organising such a department. He observes : "The Administrative Doctrine supposes the presence in all big undertakings of a permanent Council of Improvement charged with the duty of discovering improvements of which the undertaking is capable and pursuing their realization under the aegis and authority of the supreme chief. An organism of this kind seems to me indispensable to enable us to study and realize the reforms of which the governmental undertaking is perhaps more in need than any other. In order to overcome the resistance offered to reforms by ignorance, routine and particular interests, what is needed is a strong will and continuous action. Momentary manifestations in which the superior authority plays but a poor part, cannot produce serious results. Continuous action demands a special organism."

## II. Theory of General Administration

The activity of the executive power is generally referred to as "administration." American writers draw a line of distinction between the functions of direction, supervision and control

on the one hand, and execution on the other Willoughby distinguishes the functions of administration in the following way. "When we examine the operation of the organs of administration we find that the activity of the stage organs divides itself into two groups. Functional and Institutional activities of the execution

We may call primary or functional the activity which is performed by an organ in order to realize the purpose for which it was established (e.g., the object of the police is the maintenance of order, that of a school—teaching, that of a hospital—medical treatment, etc.) Institutional activity, on the other hand, is that which the organ itself must perform in order to exist and to operate as an organ." To this category belong, for instance, the appointment of personnel, the arrangement of the work of an organization, such as the schools or police, and the provision of buildings, and material equipment, the payment of personnel, the conclusion of contracts for public supplies, disciplining of personnel, the replacement of persons on sick leave, the filling up of vacancies, the utilization of available appropriations, the keeping of financial records, the drafting of reports, etc. Functional activity is special and technical and varies according to the branch of service. Institutional activity, on the other hand, is similar to all branches of administration.

Fyrol drawing analogy from the principle of Scientific Management in business divides the essential operations of government into the following six groups : Fyrol's theory

- (1) Technical operations (production, manufacture, transformation)
- (2) Commercial operations (purchase, sale, exchange).
- (3) Financial operations (procurement and administration of capital)
- (4) Operations of security (protection of goods and persons).
- (5) Accounting operations (inventory, balance-sheet, prime cost, statistics, etc.).
- (6) Administrative operations proper—foresight, organizations, command, co-ordination, control.

Fyrol uses the term "administration proper" in a narrower sense than Willoughby, because the functions of the sixth group are peculiarly the functions of the head of the executive.

The five elements of administrative function—foresight, organization, command, co-ordination and control are explained and defined by Fyrol in the following way Five elements of administrative function

"The essence of *foresight* is planning. An accurate and complete knowledge of the past and the present enables us to draw conclusions respecting future

probabilities and possibilities and respecting development, improvement or reduction. *Organization* is the determination and realization of the general structure of the undertaking in keeping with its objects. It means giving the whole its proper form and each detail its proper place, determining the frame and filling it with content, assuring a precise division of administrative labour, giving the undertaking every necessary performance and accurately determining its sphere of activity. It is in this way that organization carries over into life the theoretical conceptions of foresight. Execution is commanding and insuring co-ordination. *Command* means bringing into action all the organs which foresight considers necessary and organization has created. With command, the role of authority and responsibility, of initiation and discipline is begun in all phases alike. But the giving of orders would not suffice to insure the execution of the will of the chief unless it were supplemented by the effort to insure co-ordination. *Co-ordination* means the introduction into the whole of harmony and equilibrium and the giving to things and acts their due proportions. It means the application of means to the end, the unification and levelling of the various efforts, the establishment of a close connection between the several sections or departments which though they have different tasks, meet in the common aim. *Control* is what is meant by an enquiry into results. To control is simply to convince ourselves that at all times everything is carried out in keeping with the accepted programme, the order given and the principles in force. The work of control compares, discusses, judges, and endeavours to enhance foresight, to simplify and strengthen organization, to increase the perfection of command and to facilitate co-ordination."

### III. Elementary Constituents of Bureaucracy

The term 'Bureaucracy' is of French origin. In the 17th century important branches of administration were entrusted to individual ministers, each of whom had a so-called 'bureau' at his command in which business was transacted by several higher and lower officers who acted as subordinates of respective ministers. As there was frequent change of ministers, the chief clerks shaped and dictated the policy to the ministers. The chief clerks thus acquired a preponderant influence which was often abused to the disadvantage of general interest of the state. This form of government was contemptuously termed bureaucracy. In every modern state the highly complex business of administration is now performed by a host of officials, and this body is collectively known as bureaucracy.

There are six constituents of a Bureaucracy, namely, (1) centralization of control and supervision, (2) safeguards for the independence of judgment of each member of the organization (3) keeping of records and file, (4) secrecy (5) differentiation of functions and (6) qualification for office.

Certain functions are allotted to regional or local authorities in every state. But the Central authority must act as an intermediary and integrator between technically and regionally differentiated functions. A hierarchy of officials is needed to bring about unity of policy and uniformity in administration. The hierarchical system implies flawless subordination. But the principle of differentiating and distributing functions limits the absolute domination of higher officials over the members of lower rank. A higher official will hesitate to reverse the decision of a lower official, when he feels that the latter has a better knowledge of the facts in detail. But at the same time there are in every administrative hierarchy some rules of discipline. A gross breach of discipline is punished with degradation or removal from office. The punishment, however, should not be awarded until one has been formally accused, indicted, examined and pronounced guilty, either by a regular court or by a court composed of his peers.

Hierarchy

Keeping of records and file is become absolutely necessary in all forms of government, because precision and continuity are essential to effective administration. Officials have got a tendency to follow precedents. Rigid adherence to precedence gives rise to redtapism. Certain amount of secrecy, too, has got to be maintained by officials for the sake of preventing wire-pulling and jobbery. The bureaucracy should be neutral and independent towards political parties.

Record,  
secrecy  
and  
neutrality

#### IV. Development of Professional Civil Service

The increase in the functions of government and the growing complexity of the administrative work have made it necessary to have a professional civil service. It consists of technically trained persons who enter the service of the state, and remain in office, irrespective of change of parties in power, till they attain the age of superannuation. The appointment of permanent technically qualified officials has been due to the desire to increase efficiency. To enable the civil servants to give all their time, energy and attention to the business of the state, provision has been made for pension not only to themselves after their retirement but also in some cases to their widows and orphans.

Causes of  
growth of  
Professional  
Army

The professional civil service was instituted in England in 1855, when the Civil Service Commission was established. This body arranges entrance examination for candidates for all openings in the civil service. There are two classes of Civil Service—Executive and Administrative. The function of the Executive class is to perform the operations developed and determined by laws, rules and practice. Officers of this branch are recruited at the age of 18 or 19 after finishing a secondary school examination. The Administrative class is recruited from the brilliant University graduates, who enter the service between the ages of 22 and 24. The duties of this class of officers "are concerned very largely with the formation of policy, the revision of existing practice or current regulations and decisions, the recognition and direction of the business of government and co-ordination and improvement of government machinery and the general administration and control of the departments of the public service. For the performance of these duties, the government places stress upon intellectual capacity, an understanding of relationships, and personal ability to direct and to manage. These officers must understand the British traditions, the subtleties of distinction, the careful balancing of ideas and the avoidance of irrelevant contentious matters, in the handling of delicate situations "

In the United States of America the professional Civil Service was instituted in 1883. A Committee was appointed in 1936 to devise means for increasing the efficiency of the civil service.

The committee suggested (1) that more than one hundred separate departments, commissions and boards of the government should be consolidated within twelve regular government departments, which would include the existing ten departments and two new departments, a Department of Social Welfare and a Department of Public Works. (2) The merit system should be extended to the whole civil service including administrative posts—a change involving  $2\frac{1}{2}$  lakh positions. (3) The three planning agencies should be strengthened in order to render more effective assistance to the President in his administrative responsibilities.

The importance of professional class of administrators is seen best in the change of attitude in Russia towards them. Lenin and his party were determined to put an end to the bureaucracy for ever. Consequently, the Bolshevist party made the following demands : (1) That every member of the Soviet should be required to co-operate in the performance of some definite task of the State administration ; (2) that there should be a constant rotation in the work, so that every member should have an opportunity to acquire

Growth of  
professional  
Civil  
Service in  
Russia

experience in each branch of the administration ; (3) that the whole body of workers should be gradually initiated into the work of the State administration. But the Soviet government had to change its opinion after twenty years of experience, and to admit the necessity of securing permanence of tenure and technical efficiency. Thus writes Stalin . "It may be said decidedly that nine-tenths of our troubles and defects are due to a faulty organisation of the control of execution. In order to enable the control of execution to attain its object, however, two things at least are needed—first, that the control of the execution should be systematic and not desultory, and secondly that the control of the execution in the Party, Soviet and economic organisations and in all their branches should be under the direction, not of inferior persons, but of persons possessing the necessary authority who are the heads of the organisations. Of popular importance is the proper organisation of the control of execution in the central organs—the ministers. To this end in 1934, *A Soviet Control of Commission* was organised. It has 40 members and its jurisdiction extends to the whole territory of the Soviet Union. It is divided into sub-commissions and has representatives in the Member States, in the provinces and in the districts which are entirely independent of the local organisations."



## CHAPTER XVII

### THE JUDICIARY

#### I. Functions of the Judiciary

The welfare and security of the average citizen depends on the prompt, certain and impartial administration of justice. It is the judiciary which is the shield of innocence and the impartial guardian of every private civil right. The chief functions of the Judiciary are to ascertain and decide rights, to punish crimes, and to protect the innocent from injury and usurpation.

The Judiciary interprets and makes laws

In all countries the Judiciary decides the application of existing law in individual cases. But in those countries where laws have not been codified, as in England and the United States, the judges not only interpret but also make laws. Where the letter of the law is silent, the judges are called upon to attach to it the meaning which may be considered reasonable and consistent with the general principles of morality and public policy. Their decisions become precedents for future cases of similar type.

In countries living under a Rigid Constitution the Judiciary takes its place side by side with the Executive and the Legislature as a co-ordinate department of government.

In the rigid constitutions the Judiciary acts as the interpreter of the constitution

"When questions arise", says Bryce, "as to the limits of the powers of the Executive or of the Legislature, or—in a Federation—as to the limits of the respective powers of the Central or National and those of the State Government, it is by a court of Law that the true meaning of the constitution, as the fundamental and supreme law, ought to be determined, because it is the rightful and authorised interpreter of what the people intended to declare when they were enacting a fundamental instrument. This function of interpretation calls for high legal ability, because each decision given becomes a precedent determining for the future the respective powers of the several branches of government, their relations to one another and to the individual citizen."

The nature of judicial functions demands that the judges ought to possess great legal acumen, faithfulness to the constitution, firmness of character and above all honesty and independence.

Qualifications of Judges

In monarchical states "the independence of the judiciary is essential to protect the people from the arbitrary interference and oppression of the crown and also to prevent the judges from being reduced to a position of cringing subserviency to the executive." In republics the

Necessity of securing independence to the Judiciary

independence of the judiciary is also essential for protecting the constitution and laws against the encroachments of party spirit and the tyranny of faction. When grave political issues excite party feeling, the courage and uprightness of the judges become supremely valuable to the nation

## II. Independence of the Judiciary

The independence of the Judiciary depends upon three factors ; (1) the inducements offered to meritorious men, (2) the methods of selecting them ; and (3) guarantees for the independence of the Judges when appointed. The inducements which should be offered are good salary, permanence in office and social status. The tenure of Judges in the majority of constitutional states is permanent, that is to say, they hold office while they are "of good behaviour"—i.e. not guilty of any crime known to the law.

Methods of  
securing in-  
dependence  
of the  
Judiciary

In Switzerland the Judges are elected for six years by the two Federal chambers, sitting together, but as re-election is frequent, the tenure is as good as permanent. In some of the States of the U. S. A. Judges are elected by the people for a short term. This has led to all sorts of abuses and corruption. Popular election of Judges is subversive to the honesty and independence of the Judiciary. The elected judge is sure to show favour to his party men even in judicial administration. Moreover, the voters are not fitted to choose whether one candidate is more learned in law than another.

Election of  
Judges

In France candidates for the Bench are selected by competitive examination under the direction of the Minister of Justice, and they are promoted from one grade to another according to seniority and merit. They can not be removed either by the Legislature or the Executive, but only by the final court of appeal called the Court of Cassation, acting through a committee of seven judges. In Great Britain judges are appointed by the Lord Chancellor and they can be removed only as the result of an address of both the Houses of Parliament.

Recruitment  
by examina-  
tion

The independence of the judiciary in England has been established by the Act of Settlement (1701). According to this Act the judges have been given security of the tenure of office. They are appointed by the Crown on the recommendations of the Lord Chancellor and they hold office during good behaviour. Their removal is possible only on a joint address of the two houses of the Legislature, namely, the House of Lords and the House of Commons. The judges of the smaller courts may be removed from office by the

The Act of  
Settlement

Lord Chancellor for gross misconduct but this power is rarely exercised by the Lord Chancellor.

In the United States the Federal judges are appointed by the President with the consent of the Senate and are irremovable except by impeachment. Thus, the independence of the judiciary has been secured in most cases by giving them a security of tenure which raises them above the exigencies of political expediency.

Impeachment of Judges

### III. The Organisation of the Judiciary

In modern states the Judiciary may be organised in three different ways; (i) it may be elected by the Legislature; (ii) it may be elected by the people or (iii) it may be appointed by the Executive. The practice of election by the Legislature prevails in Switzerland but it does not work well, for it leads very often to the appointment of party candidates and thus leaves out really capable men.

Three modes of organising the Judiciary

The system of popular election exists in many of the states in the U. S. A. The obvious defect of the system is that the masses hardly possess the requisite capacity to test the qualification of a person which may make him an efficient judge and they often elect incapable judges; the judges thus appointed seek to win public approval and as such make themselves poor judges indeed by playing to the wishes of the populace. The system of appointment by the Executive has been found by practice to be most satisfactory and this system has been adopted in most of the states.

In the Judicial system of every country there are generally two sets of courts namely, Civil and Criminal. The civil courts have a supreme court at the head and so also the criminal courts. Below each of the highest courts in each category, there are lower courts with definite jurisdiction, both pecuniary and territorial.

Civil and Criminal Courts

There is an important difference in the composition of courts in the Anglo-Saxon countries and those existing in the continental countries. In the Anglo-Saxon countries like England, every court excepting the appeal courts has a single presiding judge while courts in the continent are presided over by a number of judges. The continental system thus provides a safeguard against the arbitrary decisions of a single personality, but the Anglo-Saxon system is liable to this contingency. But it should be noted that the continental system involves large expenditure on the part of the government. Further, judges in the Anglo-Saxon countries go on circuit from place to place but the continental judges do not

Difference between the English and the Continental Judiciary

#### IV. Comparison between the English and the French Judicial systems

In England the decisions of Judges are generally regarded as binding on later Judges in similar cases. The Judges exercise essentially legislative authority, as their decisions form the case-law. But in France the Judges are expressly forbidden to build up case-law. The cause of this difference is to be found in the fact that in England these laws are not wholly codified, while in France they are codified. In the administrative courts of France, however, precedent is acquiring the status of law.

French Judges can not make case-laws

In England there is no separate court to decide cases between officials and private citizens as it exists in France. In England a single Judge often hears cases, but in France there is a bench of Judges in every court except the very lowest. The Judges in England are recruited from bar but in France from those who have no connection with the active practice of law. The Judiciary in England is a separate branch of government, but in France it is regarded as a branch of civil service. Neither in England nor in France is the Judge empowered to declare a law unconstitutional.

Administrative Courts in France

The French Judges are members of the Civil Service

#### V. Comparison between the English and the American Judiciary

In the United States of America as well as in England Judges are appointed by executive authority. The Lord Chancellor nominates the Judges in England, while the President appoints the Federal Judges with the consent of the Senate. The English Judges can be removed by a petition by both the Houses of Parliament; in the U. S. A. the customary mode of removal is by impeachment, that is, through the preferment of charges by one chamber of the Legislature, usually the House of Representatives and trial by the other.

Appointment and removal

In England the Lord Chancellor, a member of the cabinet is the highest Judicial dignitary in the land. But in the United States there is no representative of the Judicial body in the executive and vice versa.

The Lord Chancellor of England

It is in its relation to the Legislature that the Judiciary of the U. S. A. presents a complete contrast to that of England. The Judges in England are bound by the laws passed by the Parliament. They have no competence to pronounce upon the legality or otherwise of the laws enacted by the king in Parliament; while in England the Parliament is supreme. In the U. S. A. the constitution

In the U S A. the Judges can declare a law ultra vires

itself is supreme. This fact makes the Judiciary of the U. S. A. a co-ordinate organ with the Legislature and the Executive. The federal Judges have it as their prime duty to safeguard the constitution and to treat as void every legislative act, of either Congress or a state Legislature, which is inconsistent with the constitution. They can not, indeed, abolish such a law, but they are bound to treat it as void in all cases before the court arising out of it. De Tocqueville speaks very highly of this system in the following words. "I am inclined to believe that it is at once the most favourable to liberty as well as to public order and forms one of the most powerful barriers which have ever been devised against the tyranny of political assemblies." The Judiciary in the U. S. A. has a competence far beyond that of the Judiciary in England.

The American system guarantees civil liberty

In both the countries the Judges contribute to the growth of the law by adding case-law. Another point of difference in the judicial organisation of the two states is worth noticing. The Congress has no judicial function, except in trying cases of impeachment. The House of Lords is the final court of Appeal in England, though the Judicial work is done not by the ordinary peers but by the Lords of Appeal.

House of Lords as a Court

## VI. Comparison between the Judicial system of the U. S. A. and Switzerland

Both the United States of America and Switzerland are Federal states and their Judicial systems have something in common. The Federal Judges in the U. S. A. are appointed for life or during good behaviour by the President. The Federal Judges in Switzerland, fourteen in number are elected by the Federal Assembly for six years. But they are usually reappointed. As the supreme court in the U. S. A. decides cases relating to controversies between different states, or between the union and a state or between a state and a citizen of another state, so does the Federal court in Switzerland possess jurisdiction over disputes between cantons and cantons and between cantons and individuals or corporations.

Mode of appointment is different

But the impotence of the Swiss Federal Court is unique among federal states. The Supreme Court in the U. S. A. is the guardian of the constitution. It can pronounce a law passed by the Congress unconstitutional, but the Swiss Federal Court has no such interpretative power. It is a provision of the Swiss Constitution (Art. 113) that every statute passed by the Federal Assembly must be accepted as valid.

The Swiss Federal Court is very weak

## VII. Relation of the Legislature to the Judiciary

According to the principle of separation of functions, the Legislature makes laws and the Judiciary interprets and applies those laws to specific cases. But sometimes one usurps the functions of the other and as such has some controlling influence on the activities of the other.

In certain countries the Judiciary is entitled to declare the laws passed by the Legislature null and void when these laws are found to be in excess of the powers vested in the Legislature by the written constitution. In the U. S. A. the Judiciary is really the custodian of the constitution. In England and France, however, any law enacted by the Legislature can not be invalidated by the law courts, for in these countries the political sovereignty of the people as expressed through the Legislature is regarded as inviolable. Besides, the Judiciary by its interpretations of law and their application to particular cases create rulings and conventions which are practically regarded as laws. Usually they are called "Judge-made" laws.

Judiciary as  
the custodian of the  
constitution

On the other hand, the Legislature exercises certain functions on the Judiciary. In England, the Upper House of the Legislature, namely, the House of Lords is the supreme court of appeal. In practice, however, this function is exercised by the six law-lords and the Lord Chancellor. In certain other countries also the upper chamber acts as a tribunal to hear the impeachments against high executive officials. The Senate in the U. S. A. and France constitutes itself into a tribunal to try executive officials charged by the lower house of the Legislature. The Judiciary is often appointed by the Legislature. In the U. S. A. the federal judges are appointed by the executive but the appointment must be sanctioned by the Senate

The Legisla-  
ture exer-  
cises some  
Judicial  
functions

## VIII. Relation of the Executive to the Judiciary

We have already seen that for the administration of justice, the Judiciary should possess a large measure of independence of the Executive, so that the Executive may not exercise undue interference with the functions of the Judiciary. This independence does not, however, imply that the Executive are always subjected to the control of the Judiciary. It is almost a recognised public law that the chief executive should be exempted from the jurisdiction of any court or magistrate so long as he remains in office. For instance, the President of the U. S. A. is immune from judicial control. But he is responsible to the Senate when that body becomes a court for the specific purpose of trying the President. Even in that case

Immunity  
of the head  
of the Exe-  
cutive

also the jurisdiction is limited to the removal of the President from the office and his disqualification from holding public office again. His personal liberties can not be restrained by any order of the court. But as soon as he becomes an ordinary citizen divested of public office, he is subjected to the control of the judiciary as a private individual

Position of  
the Presi-  
dent of the  
U S. A

At the same time, the orders and regulations issued by the President may be scrutinized and even declared invalid if anybody questioning their validity applies to the court for redress. The subordinates of the Chief Executive, however, are not exempt from the jurisdiction of the Judiciary. The court may freely exercise control over them whenever they are found guilty of violation of rules of the constitution. Even the fact that they acted according to the orders of the President can not be a defence in their favour. Thus, it is evident that as the Chief Executive has to carry on administration largely through the subordinates, the Judiciary has indirectly a large measure of control on the activities of the Executive.

The subor-  
dinate Exe-  
cutive is  
amenable to  
the control  
of the  
Judiciary

It has been contended that the Executive should not be given supreme authority for that may lead to tyranny. Experience and reason show that a large measure of authority should be vested in the Executive. For, if the Executive is controlled by the Judiciary, then the efficiency of the Executive must necessarily suffer. If a water-tight division of functions is attempted, unnecessary conflicts between the Judiciary and the Executive are bound to occur. The Executive is in a position to hamper the execution of the processes issued by the Judiciary, and the Judiciary also if bent upon resisting the Executive orders, may create troubles in its smooth working. In actual operation, however, the immunity enjoyed by the Chief Executive from the control of courts has not given rise to much abuse. There are so many checks and balances provided in every constitution that while the Chief Executive enjoys large immunity from the judicial control and the Judiciary also enjoys independence in its own sphere, the system has worked on the whole satisfactorily.

Conflicts  
between the  
Executive  
and the  
Judiciary  
should be  
avoided

Sometimes the Judiciary exercises executive function. In America and England the executive officers when guilty of offences in discharge of their official duties are tried by courts. On the continent, however, they are tried by administrative courts. The Executive also, sometimes, exercises judicial functions, such as enforcing the judicial decisions, appointment of judicial officers, trial through court-martials of military offenders and exercise of pardon which is merely a judicial function.

Executive  
functions  
of the  
Judiciary

## CHAPTER XVIII

### POLITICAL PARTIES

#### 1. Bases of Party division

Political parties are organised bodies with voluntary membership, whose concerted energy is employed in the pursuit of political power. Fellowship under a leader, lectures, meetings and committees, common festivities and material gain in the form of 'spoils' impart the cohesive force to the parties. But "the special cohesive element," writes Finer, "of a political party which differentiates it from other groups and causes political parties to differ among themselves, is their dogma of the Good State, and their desire and struggle for the power to realise its implications concretely in the institutions and behaviour of all." Gettell defines it as a group of citizens, more or less organized, who act as a political unit, and who by the use of their voting power, aim to control the government and carry out their general policy. A party is often contrasted with a faction and the latter is defined as "any constituent group of a larger unit which works for the advancement of particular persons or policies." But in practice the boundary between factions and minor parties is one to be determined by convenience rather than by logic. Parties may be formed on the basis of religion, form of government, nationality, class interests or some general questions of vital interests to the state. In the sixteenth century parties were divided into Catholics and the Protestants and in modern India they are sometimes divided into Hindus and Muslims. In the seventeenth century the contest between king and people gave birth to political parties in England. In the nineteenth century parties were organised on the continent to uphold a particular form of government, such as the Republican, Monarchist, etc. Parties usually follow nationalities. Different classes such as Labour and Capital, Zamindar and Ryot, Brahmins and non-Brahmins may form rival political parties.

Definition  
and lines of  
division

In modern states political power has been transferred from the monarch and nobles to the people. So the dividing lines between parties are tending to be economic. In the old Whig and Tory parties in England there were poor as well as rich men in each party. But now the rich and the poor have generally joined the opposite camps. "The result has been to accentuate class sentiment, making a sharper division than what previously existed between the richer and more conservative element in every country and that

Economic  
questions  
are at the  
root of party  
divisions at  
present



which is poorer, and more disposed to experimental legislation." Division of parties based on social antagonism such as that between rich and poor, Labour and Capital, Hindus and Muslims Brahmins and non-Brahmins, is deplorable in as much as such a division is unfavourable to the formation of a truly national opinion and to some extent to national unity in general

The discussions which follow assume political parties as based on some specific practical issues which divide the citizens indeed but the cleavage between the parties is never fundamental. Such parties are to be found in England, the U. S. A and France. In these advanced capitalistic governments all the recognised parties owe allegiance to the present constitution, and all are agreed to maintain a strong hold on their empires and to shut out the communists from power. Such parties may or may not differ much on political principles, but they are mainly held together by the prospect of coming to power.

All the parties owe allegiance to the constitutions

## II. Functions of Political Parties

Parties have been described as a motive force in politics. In countries which enjoy representative government, Parties furnish the organization by which, through elections, referendums, and the influence of public opinion, general will may be formulated and carried into effect.

They formulate the general will

It is the party system which brings order out of chaos. In most of the constitutional states constituencies are so large that it becomes almost impossible for an average citizen to choose his representative or to vote on rival candidates on the ground of merit. The parties are bent upon winning elections and they choose their own candidates. The principle of popular sovereignty requires the choice of party candidate to be made by those of the electors who belong to the party. "Discussion within a party, culminating before elections in the adoption of a platform, brings certain issues to the front, defines them, expresses them in formulas which, even if tricky or delusive, fix men's minds on certain points, concentrating attention and inviting criticism "

It clarifies political issues

Each party has got some funds. Funds are often contributed by public-spirited men who expect no concrete reward for their gifts to the party. But it is also noticed that business-men desiring tariff favours or seeking to escape public regulation, or persons seeking title or honour contribute handsomely to the party funds with a view to gain their selfish objects. The election expenses of poorer candidates

It helps candidates

organization it would have been impossible for poorer people to seek election, as election is an expensive affair now-a-days. Incidentally, the party system is conducive to the political education of the electors. Each party must distribute handbills and pamphlets and deliver speeches in order to convince the voters of its superiority over other parties. Through these discussions even the most indifferent elector learns something.

It educates  
the public

Party system holds together the members of a representative assembly who profess the political opinions for which the party stands, so as to concentrate their efforts on the advocacy of its principles and the attainment of its objects.

It holds to-  
gether mem-  
bers of  
Legislature

In the United States of America the Party System performs a highly important function. Had there been no well-organised parties in the United States the separation of powers between the Executive, Legislature and Judiciary would have made the constitution almost unworkable. Parties act there as a unifying force, which by controlling the various organs of government, secures harmonious and consistent policy and administration.

Parties in  
the U.S.A.  
perform  
highly useful  
functions

In consideration of the highly important functions performed by the party system we must endorse the view of Leacock that "far from being in conflict with the theory of democratic government, party government is the only thing which renders it feasible." Had there been no party organizations, by whom would public opinion in such vast populations as those of the United States, France or England be roused and educated and directed to certain specific purposes? Who would have given political literature to the voters, stirred them out of apathy, arranged public meetings and reminded them of their duty to vote? Work in the Legislature too becomes easier because of the party discipline which binds many members together. "A modern democratic state without this somewhat artificial and yet essential unanimity would become a brawling clews of individual opinions."

It brings  
about arti-  
ficial but  
essentially  
necessary  
unanimity

### III. Merits and Demerits of the Party system

Advantages of the party system will be apparent from its influence on the working of modern democracies as discussed in the previous section. But some political theorists have brought certain serious charges against the party system. We shall now discuss the validity of these charges.

The critics of the party system accuse it of artificially promoting unanimity and disagreement among opposing groups which does

not really exist. Prof. Goldwin Smith says that where two political parties dispute the field, it presumes "a bisection of human nature," which is untrue. Another charge against the party system is that it transforms the Legislature in Parliamentary countries into a battlefield. The deliberations of Parliament become a personal struggle of the Ins and Outs, in which the interests of the country are forgotten. It is further asserted that it prompts each party to make promises and put forward plans whose aim is not to benefit the country but merely to attract popular support. That is to say, pledge first, principle afterwards. Party system gives opportunity to some self-seeking political adventurers to exploit in their own interest the general body of citizens. Then, again, the party system has been accused of debasing moral standard. It is alleged that in one way or another the sentiment of party solidarity supersedes the duty which the citizen or the member owes to the state. Elected representatives are under the iron discipline of party leaders at whose bidding they have to vote on all measures in the Legislature. Party system encourages loyalty to party at the expense of loyalty to state. It keeps out of office some of the ablest men of the state, i.e. the opposition leaders. It leads to excessive pandering to the people and suppression of truth. It also leads to bitterness of feeling during election times. The most serious charge against the party system is that the party machine is under the control of the rich people who exploit the rank and file of their organization for promoting their own selfish interests. In raising funds a party incurs obligations which compromise its effectiveness as the defender of the interests of the people.

In reply to the first charge it has been pointed out by Lecky that there are naturally four kinds of men—those who wish to return to the methods and institutions of the past (reactionaries), those who wish to retain those of the present (conservatives), those who wish to reform present institutions (liberals), and those who desire to abolish them (radicals). If for the sake of achieving their objects the two former classes and the two latter together act jointly in political matters, "we get a division into two great political parties, resting on fundamental psychological principles." In reply to the second charge it may be said that the parties formulate and organize public opinion and thus secure weight for popular voice. Discussions in the Legislature thrash out the merits and defects of the proposed measures and evoke public criticism, which cannot be ignored by the responsible party leaders. It must be remembered that an organised party with recognised leaders has a character to lose or to gain. If either the Ministerialist Party or the Opposition play false to the nation its chances in the next election would be very bad indeed.

Charges  
against Party  
system

How far  
are these  
charges  
true

There can be no doubt that the party discipline impairs the independence of members, but this defect is counterbalanced by certain merits of the party system. "If there were no party voting," observes Bryce, "ministers would not know from hour to hour whether they could count on carrying some provision of a Bill which might in appearance be trifling, but would destroy its coherence. Perpetual uncertainty and the weakness of the Executive, which uncertainty involves, would be a greater public evil than the subordination to his party of a member's personal view in minor matters." He further adds that party discipline imposes a needed check on self-seeking and corruption of members. Certain other defects have been pointed out by the critics.

It imparts  
stability  
to the  
Executive

Party system harmonises the activities of the various organs of government, e.g. in the United States. It prevents hasty legislation by enabling both its supporters and the opposition to express their views on the point. The party organization selects candidates for public offices, determines party issues, raises party funds, brings the voters to the polls on election day, conducts or criticises the government, and trains persons for leadership.

Useful work  
done by  
parties

Certain forms of party system, however, must be pronounced as reprehensible. We have already shown that when parties are based on social antagonism such as Hindus and Muslims or Zamindars and Ryots or Labour and Capital they destroy national solidarity. Then again, national party issues are often carried to the election of local bodies, such as the County Council, District Board or Municipality, which bodies have got nothing to do with nation-wide questions. Such a perversion impairs the efficiency of local bodies. The 'Spoils System' as practised in the United States, France, Canada and Australia is another serious defect of the party system. The victorious party turns out even the best men of the defeated party to make room for its own adherents. This system gives rise to inefficiency and political corruption.

Reprehen-  
sible forms  
of parties

#### IV. Double Party vs. Multiple Party system

In the seventeenth and eighteenth centuries the electorate was small, being confined to richer classes of people, who were all agreed about the general objects of the State. Two Parties were organised in England and the U. S. A. on the basis of minor differences in principles. "The double party system," observes A. N. Holcombe, "is doubtless a convenient system for contending peoples, but it is not an efficient system for the expression of public opinion when

Causes of  
the rise of  
multiple  
parties

the variety of opinion and intensity of conviction are great." It is on account of the intensification of conviction of economic groups and the extension of electorate that the people in almost every state on the continent were divided into a large number of parties, or groups. Proportional representation was adopted in many states after the War with a view to secure to each party adequate representation in Legislature according to its numerical strength. The emergence of the Labour Party in Britain interfered with the traditional working of the double party system.

Prof. Ramsay Muir believes that the three-party system is quite natural and favourable to freedom of opinion. He advocates the formation of the Right, the Centre and the Left parties. These three will correspond, according to him, to the British Conservative, Liberal and Labour Parties.

The Three Party system

"In almost all countries," he observes, "those who take a serious interest in politics may be divided into three types ; first, those who do not desire any great changes in the social order ; secondly, those who desire great changes, but only in a Socialist or Collectivist direction ; those who desire great changes, but not in a Socialist direction—rather in the direction of creating the conditions within which individual enterprise can operate with most advantage to itself, and with least restriction of the liberty of others " He further argues that the bi-party system destroys the prestige of the Legislature and gives rise to the dictatorship of the Cabinet. "It has disturbed the working of our system of government," observes Prof. Muir, "by dividing Parliament into two serried and disciplined armies—a majority whose primary aim is to keep a party government in office, and a minority whose primary aim is to discredit it in order to replace it. This gives unreality to the proceedings in Parliament and has greatly weakened its prestige in the eyes of the nation. Because the Opposition will seize every possible opportunity of discrediting the Government, the Government party must swallow all its scruples, and support the Government in all it does, abdicating the duty of frank and candid criticism except when it is not likely to have any serious result "

Defects of Double party system

We admit that the division of the representatives into two parties raises many unreal issues and destroys the prestige of Legislature but the group system on the Continent has not made the position of any continental legislature more eminent and respectable than that of the British Parliament. On the other hand, under the multiple party system the representative's freedom of manoeuvre tends to discredit any Government by making it uncertain of the steady allegiance upon which alone an important political programme can be carried through.

Defects of Multiple party system

If there are three parties in the state, either one single party will gain a strong majority in the election, or no party will be able to secure a majority. In the first case there will be little difference between the bi-party and the tri-party system. If no party gets a clear majority, either a coalition government or a minority government shall have to be formed. Coalition government enjoys less prestige, because its mandate comes from the various parliamentary groups which form the coalition instead of directly from the people, as is the case when a party comes into power under the double party system. It is less powerful, because of the lack of unity in the aims and objects of the leaders of parties. Moreover, coalition governments are notoriously unstable.

Coalition  
Government  
and its  
defects

But a coalition government, whether of two or more than two parties, has got some advantages over a single party government. A coalition government is more flexible, since it can be dissolved and reorganized without a fresh election. It is more favourable to deliberation, because its component groups have more opportunity for reflection than the supporters of a rigidly organized major party government. The public can make its influence felt to a greater extent upon a coalition government because its components have greater freedom of action than the members of a single party. During the last Great War the multiple party system of France stood the strain better than the English system. But Magyar points out the cardinal defects of the Multiple Party system in the following words: "Compromises have to be observed so thoroughly and to such a degree that serious action, the solution of great national problems, is rendered impossible, since the moment there is divergence of opinion between the parties on any question, the coalition falls to pieces and the government has to resign. Unanimity is attainable in many cases only negatively in the determination not to solve some question or to postpone attempting the solution."

Advantages  
of Coalition  
government

Prof. Laski, however, holds that the existence of two party system is the best method of working representative government. It enables the electorate to choose the Government directly and to fasten the responsibility for action taken on a determinate group of persons. "If we assume that parties seek for power that they may translate into action the principles they profess", he observes, "the more direct and decisive the choice of the electorate has to make, the better is the function both of the electorate and of the Legislature likely to be performed." Parties may be formed on religious, nationalistic, economic and even on personal grounds. But it is the economic interest which is, now-a-days, the

Laski's  
advocacy of  
double party  
system

predominant cause of division into parties. Other interests may merge themselves into the two parties advocating opposing economic interests. But in that case each party will become a federation of groups, which again will tend to destroy the unity and coherence of the party. In India the Congress party has now been divided into a number of almost irreconcilable groups.

## V. Political Parties in England

England was the traditional home of the two-party system. In course of the seventeenth century, the Cavaliers and the Roundheads, supporting the rival authority of the Crown and Parliament respectively, developed into the Tory and the Whig parties. Soon after the passing of the First Reform Act (1832 A. D.) the Tories and the Whigs changed their names into the Conservative and the Liberal parties respectively. But on the question of the repeal of the Corn Law the old party lines were blurred out and England remained practically without well organised parties between 1846 and 1865. After the passing of the second Reform Act (1867) Disraeli and Gladstone reorganised the Conservative and the Liberal Parties respectively. But shortly after this the Irish Nationalists formed a party of their own. Under the leadership of Parnell, they joined hands sometimes with the Conservatives and sometimes with the Liberals with a view to secure the greatest possible concessions to Ireland. The Irish Nationalists, however, could never be strong enough to form a ministry by themselves. So practically the two party system retained the motive force in English politics till the conclusion of the Great War. After the war the Labour Party, which was gradually gathering strength from the beginning of the present century, came to the forefront. In 1924, the Labour Party formed a government, but as it did not command the majority in the House of Commons, it had to resign after a ministry of nine months only. Then the Conservatives formed a ministry and held power till 1929. The General Election of 1929 returned Labour as the largest party indeed, but the combined strength of the Conservative and the Liberal parties was greater than their own. Under these circumstances Labour formed its second Ministry indeed, but it could hold power only up to the year 1931. In that year there was a split in the Labour Party itself; the majority of the party refused to submit to the leadership of the late Mr. Ramsay Macdonald. In the General Election which followed, the Conservatives secured the majority, but their leader, Mr. Baldwin consented to serve under Mr. Ramsay Macdonald, who became the Prime Minister for the third time. Mr. Baldwin became the Prime Minister as the head of the Conservative party after the

Origin and  
development  
of English  
parties

general election of 1935. He resigned his office in May 1937, when Mr. Neville Chamberlain became the Prime Minister. In September, 1939, the Cabinet has been reconstituted and some seats have been given to the Liberals

All the three parties in England are now in substantial agreement with one another in foreign policy and in their policy towards India and Ireland. The Liberal Party has been split up into three groups and has very little constructive plan of its own. The chief point of difference between the Labour and the Conservative Parties is regarding tariff policy. The Conservatives are Protectionists, while the main wing of the Labour Party advocates Free Trade. The left wing of the Labour Party is now advocating socialism.

Views of  
different  
parties

Each of the three Parties has a strong organization inside and outside the Parliament. In each constituency there is a local committee of each party. Each has a central organization, located in London, with an office and a paid staff. The central offices guide and control the local committees, distribute propaganda literature through them and raise funds for the whole party. The candidates are generally chosen by the local committees with the advice of the central office. Inside the Parliament, each party has got a number of whips, whose business it is to bring the members together at the time of voting in the Houses.

Organisation  
of parties

## VI. Parties in the United States of America

The organization of political parties is one of the three chief contributions made by the United States to political science as an Applied Science, the other two contributions being Rigid constitutions and the use of Courts of Law to interpret them. Fathers of the American constitution never thought of the possibility of the rise of political parties in the United States. But from the very beginning of the Federal Constitution the questions which successively formed the bases of party division were the authority of the Federal government, Tariff policy and slavery. As the Federal senators were chosen by the Legislatures of the states, each National Party fought every election on party lines in order to obtain in the state Legislature a majority which would secure the choice of senators of its own persuasion. It would be noticed that the state Legislatures were not directly concerned with national issues, on which parties were divided. From the states the habit of carrying on all sorts of elections spread to cities and counties. "It became a principle to maintain the power of the National parties in all elected bodies and by all means

Origin of  
American  
Parties

Introduction  
of the 'Spoils  
System'



available, for the more the party was kept together in every place and on every occasion for voting, so much the stronger would it be for national purposes " The party organization further required that all offices down to the humblest ones were to be bestowed on the members of the party only.

The two parties that exist in the U. S. A. are called the Democratic and the Republican. There is no collective adherence to any single principle or policy in any party. Both the parties are opportunists, adopting their policy on current questions to the circumstances of the day, and mainly governed in their selection of political opinions by the probability of political success. Both the parties have got liberal and conservative wings.

The organization of political parties in the U. S. A. is unusually strong for three reasons. (1) Disjunction of executive and legislative power in the constitution naturally calls for a bond of union in the shape of a party organization. (2) The extent of territory is so great that some organization is needed to select candidates for Presidentship, State governorship and other elective posts. (3) The theory of popular sovereignty favoured the election of most of the executive and judicial officers, so the prize to be obtained by a victory in elections is tempting enough to promote party organizations.

Party organization is based on the Primary meeting of all members of a political party within a given electoral area for the purpose of (a) selecting party candidates, (b) naming delegates to sit in a party convention, and (c) appointing a committee to take charge of local party work. But in the last century the Primaries were attended by very few men and became tools in the hands of unscrupulous bosses. The manifold evils of the system have been recently remedied in every State by different laws. In all the States the Primary has been turned from a private party meeting into a public meeting, at which the citizens are entitled to vote (a) for the selection of party candidates for various state offices and senatorships without an intermediary convention, (b) for the selection of delegates to a party convention, (c) for the election of members of the local party committee. What strikes us as a new departure from European politics is the legal recognition of Party as a public political institution. The State laws provide that due public notice shall be given of the time and place of primary elections; that the elections shall be by ballot, and that the expenses shall be paid by the state. In some states it is the practice to hold "Open Primaries" at which the voter, by the use of the secret ballot, may cast his vote for one of the Parties without declaring to which party he belongs.

In other states "Closed Primaries" are established and the admission to vote here implies some test of party "Primaries" allegiance. In the Presidential election voters in the Primaries are called upon not only to elect the members of the National Convention, but also to register their "preference" for a particular presidential candidate. Thus the recent reforms have introduced the principle of direct nomination for all offices, from the highest down to the lowest.

Bryce describes the peculiarities of the party system in the United States in the following words — "In France legislation and administration are carried on not by one party but by combination of groups frequently formed, dissolved, and then reformed. In England party conflicts fought all over the country come only once in three, four or five years, at a General Election; and when one party goes under and another comes to the top, only some thirty or forty persons change places, so the general machine of administration seems but slightly affected, and few are those who directly lose or gain. Party policy, moreover, rests with half-a-dozen Parliamentary figures on each side, i.e. the leaders of the two Houses and their closest advisers and associates, whereas in the United States the National Convention is the supreme exponent of party doctrine and policy, universally recognized as the party oracle, though its deliverances may in practice be conveniently forgotten. Thus the American system, though it purports to regard measures rather than men, expands nearly all its efforts and its funds in getting men into places, and though it claims to give voice to the views and will of the whole party does in reality express those of an oligarchy which becomes, subject to the necessity of regarding public opinion, the effective ruler of the country, whenever the party holds both the Legislature and the Executive "

Importance  
of the  
National  
Convention

## VII. Party System in France

Party organization in France differs from that of the English-speaking countries in three important respects. First, instead of two or three well organised parties we find a number of party groups in France. In the United States the two parties alternately secure the control of the government, but in France a ministry is formed by a coalition of several groups, because no single group is strong enough to outnumber all the others. In England, if the cabinet loses the confidence of the House of Commons all the members of the ministry resign and none of them accepts office till his party has again been called to form a government; but in France, a member of the defeated ministry, takes office in the succeeding ministry. This shows that allegiance to party is less strong in

Existence of  
a number of  
Groups

France than in England or America. The notorious instability of French ministries is primarily due to the coalition of separate groups whose mutual support is given purely for reasons of expediency.

The second characteristic of the French party system is that though the parties are more or less organised in the Chamber of Deputies, yet they do not extend over the country at large. No party group in France has an organization ramified through all the constituencies like the three parties of Great Britain or the two historic parties of the United States

French party organization is not wide

Self-constituted party caucus

Another distinguishing feature of the French party system is that the local committees are not formed or elected by a vote of all the local members of the party. A few minor officials or ex-officials, shopkeepers, lawyers, doctors, teachers and journalists constitute a self-appointed committee to carry on the election campaign in favour of this or that candidate. Such a state of affairs is due to the fact that the French citizens are less definitely committed to any one party than they are in the English-speaking countries.

In France the Republican Democratic Federation, formed in 1903, acts as the real conservative party. It is aggressively nationalistic, is opposed to the separation of Church and State, and is against the civic discrimination against the clergy. Its adherents in the Chamber of Deputies usually join the *Groupe de l'Union républicaine démocratique* and in the Senate the *Gauche républicaine* and the *Groupe de l'Union républicaine*. These are the principal right and centre parties. On the left are the Communists, the Socialists and the Radical Socialists. The Socialists aim at the socialization of the means of production and exchange. The Radical Socialists select their adherents from all classes. The strength of different groups in the Chamber of Deputies after the election of 1932 was as follows: (1) Conservateur 5, (2) Union Républicaine démocratique 76, (3) Indépendant 28, (4) Démocrates populaires 16, (5) Républicains de gauche 72, (6) Radicaux indépendants 62, (7) Radicaux-socialistes 157, (8) Républicains Socialistes 37, (9) Socialistes 129, (10) Communistes-Socialistes 11, (11) Communistes 12=605.

The adherence of members to their group is not absolutely fixed. The members of the different groups may change their adherence during a legislative season. A new group may be organized and draw its members from several sources. "Save for the groups of the extreme right and the extreme left," observes Lindsay Rogers, "there are no easily discernible differences of doctrine or programme. The

Elasticity of principles in groups

groups are important in that in proportion to their number they are represented on the grand commissions of the Chamber. A Deputy not infrequently chooses his group solely because he will thereby have a better chance of securing a place in an important Commission. The members of a group may see eye to eye with the Prime Minister on foreign policy but oppose him on domestic policy."

## VIII. Rise of One Party System

### Causes of failure of Party System in Continental Europe

No important state in Continental Europe except France, has succeeded in carrying on its government successfully under the double or multiple party system. In Russia, Germany and Italy there is to-day only one Party. The reason why the party system, as understood in England, the U S A and France, has failed in Continental Europe is that the essential conditions of success of such a system were lacking there. The fundamental condition of success of party government is that the electorate must have in common the same general social objectives and political ideals. If they are rent by fundamental cleavages as to what they expect of government and if they would rather die than deny themselves those objectives, party government becomes impossible. After the Great War the difference in the objectives of the electors became irreconcilable.

Lack of  
common  
social  
objectives

Moreover, Party government is not the most effective system for implementing authority. It is a device for recognising diversity of opinion and rivalry of leadership. The party which can promise most and can hypnotise the people best by means of propaganda gets power in its own hand. Once coming to power it may not care to make good its promise. The electorate must be able to consider their own best interests and those of the nation. But if the electorate is not characterized by a high degree of national unity, cultural harmony and racial and religious toleration it becomes impossible for them to be in agreement with one another about the best interests of the nation. Such unity, harmony and toleration were wanting in the post-war continental states. Let us take into consideration the circumstances which led to the breakdown of democratic government and the rise of one party rule in Italy, Germany and Russia with a view to illustrate the general causes stated above for the failure of party system.

Lack of  
unity and  
harmony  
among the  
electorate

If we analyse the political condition of Italy before the rise of the Fascist Party we find that many causes were at work

to discredit the government by Party System. First, the Pope forbade the devout Catholics to participate in politics as he did not recognize the Italian State which had deprived him of territorial possessions. This step reduced the orthodox Catholics into an irreconcilable minority and it is needless to say that such an intransigent element is incompatible with any party system. Secondly, the political parties tended to become gangs of henchmen rather than effective national organizations. The people, imbued with the feudalistic attitude, supported their deputies for the favours the latter were able to secure from the ministers as the price of parliamentary support. The ministers with a view to get an adequate support in the National Legislature played one bloc against another. This meant in practice the construction of political programme on the basis of personal favours. The Socialists were numerically the strongest party in the State in 1919. But there was no unity amongst them. One group abused the other and could not think of a concerted programme. The Fascists attacked the Socialist groups with brute force in various localities and ultimately secured the control of the Government.

In Germany, too, under the Weimer Constitution of 1919, aggressive, irreconcilable groups spent most of their energy in rendering each other ineffective. The Weimer Constitution gave the people the right to elect the chief executive of the nation, the Reich President and its legislative body, the Reichstag. The Reichstag was elected on the basis of proportional representation. Thus the Constitution guaranteed that every group of any importance in Germany's complex national life would have a chance to be heard. The centre of gravity now shifted from the executive to the legislature. The constitution made the tenure of the Chancellor and each of his ministerial colleagues dependent upon the confidence of the Reichstag. But in the Reichstag there were a dozen parties and they had no common objective amongst them. Political action became possible only by exhaustive negotiation and compromise between the conflicting economic interests of the different groups. Coalitions which appeared to have the confidence of the Reichstag lasted only so long as divergent interests cared to maintain agreements which had been worked out behind the scenes. Under these circumstances cabinets were formed and dissolved in close succession. Between 1919 and 1933 some thirty cabinets were formed. The instability of the executive and the ineffectiveness of the legislature threw more of the task of governing upon the bureaucracy. A growing proportion of the people, composed of the middle class as well as communists and socialist workers grew increasingly impatient

Causes of  
rise of the  
Fascist  
Party in  
Italy

Causes of  
rise of the  
Nazi party

with such a system of government. Meanwhile the latent crisis of the German national economy had assumed the appearance of acute decomposition. There was acute economic distress ; the number of the unemployed was mounting month by month. At that moment the people groping in the dark turned towards the National Socialist German Workers' Party which polled 65 lakh votes in the September elections of 1930. In the election of 1933 the National Socialists won no less than 288 seats out of 647 seats in the Reichstag. Now this party, popularly known as the Nazi party, suppressed the Communist and the Social Democratic parties and became the only party in the state.

Complete disorganization of the government and the existence of fundamental difference between the bourgeoisie political parties gave opportunity to Lenin to capture the machinery of government as the head of the Bolshevik party. In 1918 Lenin substituted the name of Communist Party for that of Bolshevik.

Causes of  
rise of the  
Bolshevik  
Party in  
Russia

In Italy, Germany and Russia no other party than the official one is recognised or tolerated. In Italy, Germany and Russia the dictatorship of Mussolini, Hitler and Stalin respectively is founded upon party dictatorship. The existence of the party organization in these countries differentiates the dictatorship from the personal and military dictatorship of the past. "No Roman Emperor" observes Calvin B. Hoover, "had either the resources of the party organizations or those of mass propaganda upon which to rely. Consequently, the completeness with which the economic, political and social structure can be controlled by Stalin, Hitler or Mussolini could hardly have been paralleled by the power of any Caesar."

A single  
party gives  
rise to  
Dictatorship

## IX. Political parties in India

The most striking characteristic of the political life in India is that it is under foreign subjection. As such all political parties have got the common objective of freeing the country from foreign rule. The British political parties are designed to take part in the working of a system of government which they accept, whereas Indian political parties aim at obtaining a reorganization of the state on a basis which would permit them to participate in government. The central government in India is still undemocratic in as much as the executive is not responsible to the Legislature. Under such circumstances political parties can not look forward to the responsibilities of office in the Central Government. In the provinces, however, well organised political

Difference  
with the  
British party  
system

parties have appeared with the setting up of responsible government in the provincial field.

The most important political party is the Congress. It claims to be the only national organization of the country representing all classes and communities in India. But its membership is largely Hindu, though it has got many nationalist Muslims also within its fold. The Congress party decided to contest the election to Provincial Legislature in 1937 and captured majority of seats in seven out of eleven provinces. Consequently Congress ministry has been set up in these provinces. The left wing of the Congress party do not favour the acceptance of office by the Congress. In the All India Congress Committee the Rightist element is very strong at present. In its Bombay sitting in June 1939 a resolution was passed prohibiting individual Congressmen to participate in Kisan, labour or popular Satyagraha movements without the specific permission of Provincial Congress Committee. Another resolution has made the Congress Ministries independent of the Provincial Congress Committees. The Leftists stigmatise the Rightist policy as constitutionalism. Mr. Subhas Chandra Bose has formed the Forward Bloc with the objects of rallying all radical and anti-imperialist progressive elements in the Congress and of fighting the authoritarian tendency in the Congress. A co-ordination committee with four constituent units—the Communists, the Congress Socialists, the Royists and the Forward Bloc—has been brought into existence with a view to resume the struggle against imperialism immediately. The Central Legislature contains the Congress as well as a Congress Nationalist Party. The latter is led by Mr. Aney, a former Congress President and its policy is to denounce the Communal Award in unequivocal terms.

Communal electorate and Communal Award have given rise to parties on communal line. The Muslims have got special weightage not only in the provinces where they are in minority but also in Bengal and the Punjab where they are the majority community. Thus the total of 250 seats in the Bengal Legislative Assembly is made up of 119 Muslims, 80 Hindus and 51 special seats. In all, 31 seats are allotted to Christians including Europeans, Anglo-Indians and Indian Christians, though they form only 4 per cent of the population. The Europeans and Anglo-Indians have formed a party of their own and as they hold the balance between the Hindu and the Muslim parties they exercise a much greater influence than what is warranted by their number. The Muslims in Bengal ought to have got 102.5 seats and the Hindus 96.5 if the proportion of adult population between the two communities had been taken into account.

Mr. Jinnah has revitalised the All India Muslim League to foster the interests of Muslims everywhere. During the last election (1937) the League was principally concerned in protecting the status of Muslims in those provinces where they were in the majority—the Punjab, the North West Frontier Province, Bengal and Sind. In the Punjab however, the Unionist party, founded by the late Sir Fazli Husain and now led by Sir Sikandar Hyat Khan, secured the majority of seats. Later on, Sir Sikandar joined the Muslim League. Similarly, Mr. Fazlul Haq secured a majority of Muslim seats as the leader of the Krishak-Praja party but later on joined the Muslim League. The League, however, has not got a closely knit organisation like the Congress.

The Muslim League and other Muslim organizations

Another communal party organisation is the Hindu Mahasabha which captured a few seats in the provincial Legislatures; but its influence in the legislative bodies is insignificant.

The Hindu Mahasabha

Mr. H. V. Hodson has published a penetrating analysis of the political groupings in India in the Fortnightly Review of May, 1939. In this article he observes that the struggle for coming democratic power can be conveniently analysed as a triangle of forces, the three apexes being the Princes, the Muslims of the Muslim League, and the Congress as the overwhelmingly dominant political group in British India. There are, of course, other groups (e.g. Sikhs, Europeans, Untouchables, Indian Christians) but their importance is secondary. The 'Untouchables' might become in the future a powerful political force, specially with a widening of the franchise.

Struggle for Power

The triangle formed by the three main groups is one of mutual antagonism. The communal problem is to be considered as a resultant of this triangle of forces, and of the struggle for coming power. The Muslims are Anti-Hindu in this struggle for the grasp of political power. But, adds the writer, the nationalist sentiment comes to the top as soon as the Anti-Hindu sentiment is removed. The Muslim League is as firm in its demand for complete independence as the Congress is.

Common objective

Agitation for the democratisation of the States is fostered by the Indian National Congress, observes Mr. Hodson, for a definite purpose—capture of power at the federal centre. The Congress claims to speak for the whole of British India and has justified its claim to the extent of forming the government in seven (eight) of the eleven provinces. Yet, with all its power it sees no chance of forming a majority government at the centre of the promised Federation. As a pact with the Muslims is unlikely, the Congress turned to the possibility of securing a majority by way of

Likely Party-divisions in the coming Federal Government



democratic representation for the States. "If the bulk of the States comes to be represented in the federation by elected members, then the Congress will have the chance to form a Government of All-India. If it seems certain that the Congress do not see in the federal scheme, as eventually introduced, the opportunity of obtaining effective power in the All-India Parliament, they will put into operation the whole machinery of civil disobedience and political obstruction which is capable of bringing all but the bare rudiments of Government to a stand-still."

The above analysis shows that there is clear divergence of views between the three contestants for power in the coming Federation. It is unlikely, therefore, that these three parties along with the minor parties will coalesce into two political parties of the British and American model. The divergent interests may either form themselves into political groups of the continental type or with the increase of Fascist tendency in this country there may be only one party—the Congress. (See Appendix I for a detailed survey of party divisions in the various provinces of India)

Outlook  
for the  
future

## CHAPTER XIX

### LOCAL GOVERNMENT

#### I. Distinction between Local and Central Government

The powers of government may be distributed in two ways—either territorially or functionally. Where the whole state is divided into small areas and each area is charged with the performance of specific duties peculiarly necessary or suitable for it, it is called territorial distribution of powers; where the powers are entrusted to different authorities, each organ being selected so as to perform best the work entrusted to it—that is called functional distribution. These two methods are not alternative, but may be used together in the same state.

Two principles of division of power

The functions of the central government are of a general nature affecting the whole state. These are of such a character as to conduce to the common good of the whole state.

The functions of local government are special to a narrow locality and they provide for the satisfaction of the subordinate ends of man. The central functions

Functions of Local and Central Government

require for their fulfilment wider outlook, humanitarian ideas, cosmopolitan sympathy, and a wide knowledge of the principles and fundamentals of government. Local functions require, for their fulfilment, local experience and knowledge of details. Examples of central functions are relations between state and state, general peace of the whole world, national education, administration of justice and any other function essential to maintenance and well-being of the whole state. Examples of local functions are provision of local conveniences, local sanitation, vocational education, etc. The central government is responsible to a wider and superior public opinion, while the local government is responsible to the opinion of the neighbours who have no concern with the larger affairs of the state. The central government lays down the principles of action, and the local government applies those principles to the details of man's daily life. There are many functions which are both general and local in their character and their control should be divided between central and local government, e. g. taxation, education, etc. Nearly all modern states have a central and several local governments and they are joined together either in a union or in a federation.

Concurrent functions

Local institutions contribute more substantially to the political

education of the people than the national government. It is in the district board and municipal councils and Union Board committees that the people most easily learn the first lessons in the art of governing themselves. Democracy finds a more congenial soil in a country where the local institutions enjoy a large measure of independence than where they are controlled by the central government. Moreover, the local institutions have a greater vitality than the national government. The transformation of England from monarchy to republic in the 17th century did not bring any change in the government of boroughs or parishes. The American Revolution of 1775 or the German Revolution of 1918 did not affect the character of government in the American or German towns and rural areas.

Local institutions more important than National Government

## II. The Relation between the Central and Local Government

The experience of every country shows that it is necessary for the central government to exercise control and supervision over the local government, but the controlling power should be exercised consistently with the freedom of local authorities. The legitimate function of a central authority is not to curtail or altogether destroy the independence and the power of initiative of the local bodies but on the contrary to train, stimulate and invigorate them. A central authority can apply the fruits of experience of one local authority to another, can warn a local authority if it takes a step which has failed elsewhere and so far as local conditions permit, bring about an approximation to uniformity of standard in the administration of various local authorities consistent with the individuality of each. It can check extravagance in one locality by setting examples of economy derived from another. It can calm party bitterness, correct abuses where they exist and infuse a high standard of efficiency and public spirit into the administration. On no account, however, should a central government directly take over the legitimate functions of a local authority with the object of performing them better.

Extent of control and supervision of the Central Government

The limits of the administrative power of a local authority may be prescribed by the central legislature leaving perfect freedom of action to the local authority to be exercised according to the will of the local people and the conditions and needs of the locality. The administrative powers of the local authority may be prescribed by the central government according to its own estimate and conception of local needs and wants. The central government

Limit to Local self-Government is prescribed by National Government

should exercise a general supervision over local government affairs.

### III. Functions of Local Government

The functions of local government are to provide such tangible utilities as are of general benefit in a particular area, and indivisible among the separate citizens. The most important function of local government is to provide for public health and safety. Maintenance of public health depends on good and clean roads, conservancy service, drainage, bridge, parks, etc. It is also necessary to take precautions against disease by inspecting food and water, giving inoculation against contagious diseases, etc. The local authorities should also provide organization against fire and see that buildings are constructed in such a way as to promote public health and convenience. The western countries entrust generally the function of providing safety against crimes to the local bodies. The local authorities not only control the local police force but also maintain a special judicial machinery for dealing summarily with minor cases. But in India the police is entirely under the control of the Provincial government.

To satisfy purely local needs

The next important function of local bodies is to deal with public charity and with the maintenance of hospitals, asylums and correctional institutions. In India some local bodies maintain hospitals, but none is empowered to provide for the poor. These local bodies also provide elementary and secondary education, vocational training, libraries, museums, etc. On the continent of Europe there are local bodies which control theatres and opera houses. Last of all, the municipal authorities supply public utilities such as water, gas, and electric light, markets, docks, harbours, and local transportation. In India only the big municipalities undertake some of these duties.

To make arrangement for education, poor relief and public utility services

### IV. Relation between Central and Local Finance

The revenue and expenditure of both the local and the national governments are determined by the extent of functions they are called upon to perform. Up to the beginning of the nineteenth century the local expenditures were limited in large measure to the care of the poor, with very slight addition as for roads and miscellaneous purposes. But on account of the Industrial Revolution and the spread of democratic influence there came a rapid increase of expenditures for education, for improving the health and sanitation of the community and for developing the general welfare. These expenses were overwhelmingly local in character.

Increase of expenditure of local bodies

although there has also been a tendency of late for the central government to assume to an increasing extent some of the same functions. The consequence has been that, on the whole, the local expenditures have become in many ways quite as important as the central expenditures

The revenues of central or national government are usually collected from taxes levied on the principle of ability to pay, whereas the local finance is generally derived from fees, special assessments and prices of all kinds charged on the principle of benefits conferred or cost incurred. The central or provincial government supplements the income of local bodies by the grant of subventions in India, Canada and Australia. This, however, makes the local bodies entirely dependent on the provincial or central governments. There are four other methods of allocating funds between the central government and local bodies

Principle of  
division of  
revenue  
between the  
Central and  
Local  
Government

The taxes are assessed by local authorities with addition for the use of the Central or Federal Government in the U. S. A.

Revenues are derived mainly from the general property tax, levied upon real and personal property alike. The same tax is utilised for both local and central purposes.

Practice in  
the U. S. A

In France taxes were assessed by the central authority with additions for local purposes before 1917. At present the local revenues in France consist of one per cent addition to the state income-tax.

In France

In Great Britain there is separation of sources of revenue. Certain taxes are utilized for central and others for local purposes.

The proceeds of the customs revenue and income-tax are utilized for the nation, while the local revenues are derived almost exclusively from the local rates or real estate taxes. A portion of the yield of Death Duties, collected by the central government is reserved for the local bodies. The British practice of separation of sources is in conformity with the actual divisions of governmental functions and activities and it ensures greater flexibility and adaptation of means to the end, whereby each locality may be better able to adjust its fiscal system to its own fiscal needs. But a complete separation may introduce fiscal embarrassment. The surplus of one kind of revenue should be utilized for making good the deficit in the other.

In Great  
Britain

## V. Sources of Income of Local Bodies

In England

In England up to the year 1888 subventions from the central government in aid of the local rates were voted annually in

Parliament and were appropriated, to specific services, e. g., pauper, lunatics, salary of teachers in poor law schools and of medical officers, etc. But in 1888 a reform was effected in local government by which the system of grant-in-aid was abolished and a share of certain revenues was assigned to the local governments, e. g., excise, licence, probate duties, etc. A modified form of grant was re-introduced in 1896 by the Agricultural Rates Act by which the owners of agricultural lands were exempted from certain rates and the local authorities were compensated by a grant from the central government

Grant-in-aid system

The rest of the local revenues in England comes chiefly from direct taxation or from municipal services. The local rates are assessed on the annual value of real property, and not on personal property, tangible and intangible as in America. The local authorities seldom make the valuation, but follow the valuation made by the national government for the raising of income-tax, or that of poor law authorities. The local authorities can borrow with the sanction of the central government.

Direct tax

### In France

In France the local bodies levy a sort of internal customs duty, called the Octroi, on articles like wine, beer, spirits, oil, meat, combustibles, fodder and building materials. This hampers trade and is expensive in collection. The rest of the local revenues comes from sur-taxes on real estate, houses, doors, and windows and on business. The "principal" of these taxes are taken by the national government, and the sur-taxes given to the local bodies. These sur-taxes are levied and collected by the national government; so it may be said that the general council of the Department has no power of taxation.

Octroi duties and sur-taxes

### In the U. S. A.

In the United States, the county and township authorities draw all their financial support from the proceeds of a direct tax laid on real and personal property—land, houses, buildings, horses, carriages, furniture, stocks and shares, mortgages, bonds, etc. The method of assessment was such that the New York commissioners described the tax as a "tax upon ignorance and honesty" The method is described as follows—"The state authorities computed the amount of the direct tax needed for their purposes, and divided it up among the counties in the proportion of the value of assessed property in each. To the sum thus called for each county added the amount needed for its own use and then distributed it in like manner among its townships, again according

Direct tax on real and personal property

to the proportionate value of the assessed property in each. To this sum the township added what was needed for its own purposes, usually the largest amount of all. The total thus reached was distributed among all the property-holders of the township according to their proportion of assessed property; in other words, the total of the assessed property was divided by the total tax to be collected, and a tax rate was thus obtained which was levied on all the property."

### In India

The total income of District Boards in India is 16½ crores of rupees. Thirty per cent of revenue of District Boards consists of rates and cesses levied upon agricultural land in addition to land revenues. They are also empowered to impose taxes on companies and professional men. Other sources of income are pound receipts, tolls on vehicles, ferries and bridges. Government makes subventions, to the extent of about 25 per cent of the income of District Board. In England the state grant constitutes 48 per cent of the total income of the county councils. Receipts from markets, shops and other properties considerably add to the revenues of District Boards. Municipal revenues are derived from taxes and rates on land and buildings, animals and vehicles, professions, trades and callings, toll on roads, ferries, and octroi duties on articles of consumption entering the town. Revenues from municipal property, and sale proceeds of trees and land produce also add to the income of Municipalities. Grants from provincial government form a substantial portion of the municipal revenue.

## VI. Local Government in England

The whole of England is divided into sixty-three administrative counties including the administrative county of London.

Within these counties are urban and rural districts. An urban district which has received a municipal charter becomes known as a borough. There are more than three hundred boroughs in England, many of which contain a few thousand population, and a few are great industrial communities like Manchester and Liverpool. When a borough attains fifty thousand population or more it is usually taken out of the county and becomes known as a county borough. A county borough is treated as an administrative county by itself. The county council has power to organize any of its parts which becomes thickly settled into an urban district. There are several parishes in each urban and in each rural district. Thus there are five principal areas of local government in England, namely, the administrative county, the borough, the urban district, the rural district and the parish.

Areas of  
Local  
Government

The governing organ of a county is a County Council, consisting of a (i) Mayor, elected by Councillors and Aldermen for one year, of (ii) representatives elected by the rate-payers for three years and (iii) of Aldermen elected by the representatives of rate-payers for six years. The number of Aldermen is one-sixth of the number of representatives. A County Council supervises the work of the rural district councils ; maintains main roads, bridges, asylums, reformatories, industrial schools and other county buildings ; performs various duties with reference to county policing and distribution of old-age pensions, and controls the education of the county. The county police is controlled by a standing joint committee, composed of the representatives of the County Council and of the Court of Quarter Sessions. The County Council has power to levy a county rate or tax

Composition and function of County Council

### Committees

The council is divided into committees. The number of committees depends on the extent to which the administration is differentiated, for instance, there may be committees for each of these functions—building, water works, markets, lightning, property and lands, public health, regulation of food, road, finance, etc. Besides there is usually a "General Purposes Committee" which arranges business for the monthly meetings of the council, initiates or discusses new schemes and enterprises and generally undertakes any work that does not appertain to any of the standing committees.

Functions of Council Committees

The council takes no direct part in the administrative action but confines itself to deliberative duties and to controlling, ratifying or disapproving the work of committees. It makes the committee work and does not do the work itself. Its control is ensured in two ways.—(1) Every committee must make its estimates for the year and get them accepted by the council ; (2) every transaction of every committee and every payment made must be subsequently approved by the council. The council also passes standing orders for regulating its own procedure and bye-laws for the guidance of citizens.

Function of the Council

### Paid officers

In the English system the paid officers and servants are the executive instruments of local autonomy. The principal municipal officers are (1) the town clerk, (2) the treasurer, (3) accountant, (4) surveyor, (5) medical officer, (6) chief constable. The officers are purely executive organs, who take their orders from the committees which are the specialised administrative organs.

Whole-time servants

Each rural district has a council elected by the voters. These



councils look after public health, water supply and minor roads and grant certain licenses. The urban district councils have more expensive functions than those of rural district councils. The district councils have no aldermen. The borough council is composed of a mayor, aldermen and councillors sitting together. But in it the number of aldermen is one-third of councillors, and not one-sixth as in County Councils. The mayor may be chosen from outsiders or from amongst members of the council. The borough council is the executive and legislative authority combined. Its functions are to adopt by-laws, determine the local tax rate, prepare and vote the budget, appoint all officials and supervise the work of municipal departments. Here too, much of the work is done through committees.

Government  
in Rural and  
Urban dis-  
tricts and  
in Boroughs

The success of the English local government is due to the combination of lay men who become councillors with the expert officers, whose tenure of office is generally permanent, and to the absence of the spoils system in the local administration.

Causes of  
success in  
Local  
Government

The central government exercises control and supervision over the local bodies through six national departments—namely, the Ministry of Health, the Home Office, the Board of Education, the Ministry of Transport, the Board of Trade and the Electricity Commissioners. Besides these, the Ministry of Agriculture and Fisheries has supervisory powers in relation to markets. The actual work, however, is in no case directly done by any of these central departments. "They merely advise, inspect, regulate, give approval or withhold approval."

Central  
control

## VII. Local Government in the U. S. A.

"The large freedom of action" observes President Wilson, "and broad scope of function given to local authorities is the distinguishing characteristic of the American system of government." The system of local government in the U. S. A. may be studied best by dividing it under two heads—rural and urban.

### Township Plan in the New England States

The rural government may be classified under three heads—the town or township plan, country plan and the mixed system. In the New England states the primary government is the historic "town" or township. The citizens of the township meet once a year (with extra sessions, if necessary) to elect the officers of the township for the ensuing year, to vote on the prospective expenditure of money

Rural  
Government  
in the New  
England  
States

and the basis of its assessment. The officers thus elected are three to nine select men, the town clerk, the treasurer and the assessors, collectors of taxes, school-committee men and minor officers. These carry on the administration during the year. But in places which have got large population, elected municipal government has been set up. The townships are grouped into counties. But the county has got very little power. It merely apportions taxes for county purposes among the towns, looks after county buildings and county roads, etc.

### County Plan in the South

In the south the county is much more important than the townships. The county officers are elected by popular vote and consist of a board of commissioners, which has under it a treasurer, an auditor, and superintendents of education, roads, and the poor. The judicial work of the county is carried on by the elected sheriff, clerk, coroner, attorney and minor officers.

The South-  
ern County  
Officers

### Mixed Plan in the Middle and Western States

A combination of county and township systems is found in the middle Atlantic Commonwealths and in the greater number of Western Commonwealths. Functions are divided between the county and townships according to the nature of the business and both are governed by elected officials.

The municipal government is equally democratic. "In some states (Virginia) the city government excludes the county, in others the county remains, forming a part of the city, or including the city as part of itself." The government of the city is carried on by the city council and the elected mayor with a large number of subordinates, partly elected, partly appointed. But the city council has not got as large power as its counterpart in England enjoys. The mayor is not elected by the council as in England but by the people. Moreover, the commonwealth legislatures enact such detailed municipal legislation and restrict so much of its financial power as to diminish much of the scope of activity of municipalities. The modern tendency in America is to entrust more power to the executive (the Mayor) than to the council. The object of this plan is to fasten responsibility on one man. Higher salary and longer tenure are also being assured to the elected officers to prevent corruption.

Extent of  
democratic  
control

## VIII. Comparison and Contrast between the English and American methods of Local Government

In England the administrative staff of the local government

including the chief executive officer or the town clerk, treasurer, chief constable, borough engineer, medical officer of health, are appointed by the county council. These officers are not indeed given civil service protection against removal, but they are kept in office as long as they remain efficient. But in the U. S. A the local officials are appointed by the mayor. The mayor selects some of those prominent workers by whose support he was elected. With the end of the term of the mayor the officials appointed by him are also turned out. This is called the spoils system

No spoils  
system in  
England

Difference  
in the  
character of  
Central  
control

In the United States of America, the State government does not interfere with the local bodies. In England the central government through its various departments exercises supervision and control over the local bodies. "Central control over local government in England," observes Munro, "is administrative in character and extremely flexible. In the United States we are making it legislative, and hence more rigid. The English plan is to provide that some central board or bureau shall determine whether local authorities shall do this or that. The American plan is to settle the matter by law, not by leaving it to official discretion." But the needs and capacity of all local bodies are not the same; hence the English system is more suited to the requirements of each locality.

In the U. S. A. the municipalities can borrow up to a limit fixed by the state constitution or by a law of the state. In England there is no such fixed limit but the local body must obtain sanction of the government before it can borrow a single shilling. In this system there is very little danger of wasting of borrowed money, while in the U. S. A. some municipalities may spend it on unnecessary things or may be forced to dispense with desirable things.

## IX. Local Government in France

Local government in France assumes an entirely different character from that found in England and the U. S. A. The local bodies in these countries enjoy a large measure of self-government, whereas the French system of local administration is a highly centralized one. "Municipal home rule has no place," it has been said, "in French political philosophy."

For the purposes of local government, France has been divided into eighty-nine Departments. Each department is subdivided into a number of Arrondissements, which again are divided into cantons and communes. There are altogether 170 Arrondissements, each with a sub-prefect and a council. The number of communes is 37000, each with an elected mayor and a council. In the pre-revolutionary

History of  
Local  
Government

period there was complete centralisation of authority in France. This feature has been retained in local government, though for a short time under the constitution of 1791 each unit of local government was made practically independent. In 1799 Napoleon again established the centralised system of administration. Reason for centralisation may be found in the following words.—“It enables us to fill the local posts with our friends, safe men who will serve us at a pinch. It prevents local bodies which might be at a given moment disaffected from becoming local centres of open resistance or secret conspiracy. If such bodies commanded large funds or controlled the police, or were in any way strong and conspicuous enough to influence the masses of the people, those might be a danger. We must not give them the opportunity.”

Causes of  
centralisation  
of  
authority

A Department in France has a corporate personality indeed, but it enjoys a very limited amount of self-government. There is no right of a Department which can not be taken away by the French legislature. A Departmental council has got no control over the Prefect, who is its executive head. In each Department there is an elected council, chosen by universal suffrage, each canton returning one member who sits for six years. As the number of cantons in each Department is not the same, the numerical strength of the council varies from Department to Department. There are two sessions of the council in each year, one lasting for a month, the other a fortnight. If an extra session is called, the sittings must not exceed one week. When the council is not in session the routine work is carried on by an executive committee known as Departmental commission. The Departmental council serves as the legislature of the department. It can make regulations relating to poor relief, traffic, public buildings, etc. But its actions may be over-ruled by the central authorities at Paris. It votes the budget, which is prepared in the office of the Prefect. The budget provides funds for the maintenance of the prefectures, the court houses, the prisons, roads, bridges, etc. The characteristic feature of the French system is that the council merely deals with the administrative policy, but it has no hand in the actual administration, which is left to the Prefect.

Departments  
and  
their  
councils

The Prefect is at once the agent of the central government and the head of the executive in the department. He is assisted by his confidential assistant, secretary-general and other officers, appointed by the authorities at Paris. The Prefect is in charge of the various public services operating within his jurisdiction—main highways, bridges, jails, poor-houses, and hospitals, together with certain phases

Position  
of the  
Prefect

of public and sanitary work, education, the raising of recruits for the army, the taking of the census, the maintenance of public order, the tobacco monopoly, censorship etc., etc. He also supervises the government of the communes. But it must be remembered that he himself is controlled in every sphere of his activity by the Minister of the Interior. The Departmental council cannot take up any question for discussion which has not previously been approved by the Prefect. He prepares the budget, which is of course submitted to the council for approval. But when it has once been approved it is he who spends the money without any reference to the council. As regards the multifarious functions of the Prefect it has been well said that "Just get yourself born in France, and the Prefect will do the rest."

The Prefect carries on his multifarious duties with the help of sub-Prefects, who are stationed at each Arrondissement. The sub-Prefects, however, have no independent powers. There is an elected council in each Arrondissement, but it has no function except sitting as the body for electing senators. It cannot make any law, nor can it vote any money.

There is no distinction between rural and urban areas in the scheme of local government in France. Large towns like Paris and Marseilles and a little hamlet containing fewer than fifty inhabitants are alike communes. A commune is a municipality holding property as a corporation. It has a communal council, varying in size from ten to thirty-six members, unpaid and elected for four years by universal suffrage. The elected representatives elect from among themselves (and not from outsiders as it happens sometimes in England) the Mayor of the commune. The Mayor is the chairman of the council of the commune and performs administrative functions both as the agent of the central government carrying out the directions of the Prefect, and as the executive in matters falling within the sphere of the communal council. In some of these matters the Prefect can interfere to annul the acts of Maire or Council, and he may suspend either or both, from office for a month. The central government can remove the Mayor from his office and dissolve the council altogether. These peculiar powers of the central government show the lack of autonomy of the communes in France. The commune has got wide functions, and its council can regulate by deliberations all the affairs affecting the commune. There are trained officers to carry on the administration in large communes. "The French cities have been better governed, on the

average," says Munro, "than the cities of the United States. There have been few municipal scandals of any consequence. The city's money has been honestly spent, and good value has been obtained for it. The grosser forms of malfeasance and peculation, which have been so common in the cities of the United States, are virtually unknown in France. Contracts are fairly awarded to the lowest bidder, the spoils system has been kept in control, the officials of the various departments have been given security of tenure, and the police have remained honest."

Contrast with the municipal administration in the U. S. A.

## X. Centralised vs. Decentralised System of Local Administration

Administrative centralisation is in vogue in France and Germany, while local autonomy prevails to a great extent in the U. S. A. and to a less extent in England. In the English system, the local authorities are regarded as separated grafts of the parent tree; in the continental system they are still its branches. In the former case there is no vital connection between the central and local governments; in the latter there is such connection and the latter draw their sap and vitality from the former.

Difference between the two systems

The centralised system is usually in the hands of a governing class whose interests are distinct from those of the population, because they have less contact with the people, and they draw their inspiration from and are responsible to the superior officers on whom they depend for their promotion rather than on the public opinion.

Characteristics of the centralised system

In the decentralised system the officials are taken at intervals from the people who are, accordingly more responsible to the popular will. There is no specially trained governing class as in the centralised system distinct from the rest of the population.

Decentralised system

The centralised system possesses the merits of efficiency and economy and the officials are well-trained and experienced men with strict discipline and solidarity. This tends to make the centralised system bureaucratic. The greatest vice of bureaucratic system is that it sacrifices popular will to mechanical efficiency, and individual feelings, merits and sentiments to the statistical average furnished by precedent. The decentralised system secures the means of political education to the people, although it might sacrifice economy and efficiency in administration.

Respective merits and demerits

## CHAPTER XX

### COLONIAL AND DOMINION GOVERNMENT

#### I. Meaning of the Term 'Colony' and the Old Colonial Policy

The term 'colony' is loosely used to embrace various classes of distant territories subordinate to or dependent on a parent state. A colony, however, properly means a body of people formed by migration to a distant region, where they support themselves by industry and the produce of the soil, and are under the protection and attached to the mother-country

Definition  
of the term

In the ancient world the Greeks established communities in Asia Minor, on the coast of Africa, in Italy, and in France. A close connection, based mainly on sentiment was maintained between these emigrant communities and the states from which they had removed. But the colonies were usually politically independent of their mother-country.

Peculiarity  
of Greek  
colonies

The Romans established colonies in different parts of their empire to keep the subject population in military subordination to Rome. The principle of responsibility to a central government was brought to its greatest perfection in the policy of Rome. The *colonia* was of the municipal institutions of the empire, having its own governing corporation dependent on Rome. There were various grades of colonies—some, having high privilege of Roman citizenship, and others having the citizenship of a humbler grade.

Centralised  
policy of  
Rome

The Spaniards acquired vast dominions in America at the beginning of the modern age. They governed these colonies by sending a staff of civil and military officers. So long as Spain remained a first rate power, she kept her colonies in strictest subordination. A new chapter in the history of colonial government has been opened by Great Britain in the present age.

Oppressive  
Spanish  
system

#### II. Motives of Colonization

The forces which have contributed to the colonization of Africa and Australia in the modern age may be broadly characterised as economic, political and religious.

The Industrial Revolution created problems, which the nationalists tried to solve by colonial expansion. It was held by many

political economists that raw materials should be drawn from the colonies and finished goods sold to them. High protective duties should be imposed on foreign goods in the colonies. Moreover, the surplus capital of the highly industrialised states sought investment at high rates of interest in the colonies.

Economic  
value of  
colonies

The new imperialism of the modern age has been closely associated with the idea of nationalism since the states believed in the superiority of their own culture and in the desirability of extending it to inferior peoples. Another political motive of imperial expansion was the belief that the highest duty of every state is to aim at the extension of its own power. The German writers Trietschke and Bernhardt were the chief advocates of this belief. A third political motive was to increase the reserve of military manhood. The Industrial Revolution and improvement in medical science increased the population of the states of Western Europe. The surplus population could not find employment at home and migrated to other countries. Statesmen thought that this 'drain' of man-power could be checked by establishing colonies.

Colonies  
bring power  
and prestige

The zeal of missionaries to convert the heathens to Christianity has been a powerful factor in the development of new Imperialism. The resistance to the activities of the Christian missionaries by the natives has often been followed by violence to the former. The violence has provoked retaliation by the European powers and paved the way of establishing European rule over the natives.

Missionary  
activity

### III. Evolution of the British Colonial Policy

The history of the British colonial policy dates from the reign of James I. The settlers were privileged companies, with royal letters-patent, but in reality they enjoyed virtual independence. But their independence was restricted in two ways. First, the executive and judicial officers in the colonies were not appointed by the colonists themselves but by the Crown in England. Secondly, the regulations by which their foreign trade was governed were determined not by themselves but by the British Parliament. Representative institutions being divorced of responsibility bred discontent amongst the colonists. The result was the loss of the first Empire of Great Britain in America.

The old  
colonial  
system

The policy of Great Britain towards the colonies for some fifty years after the loss of America shows that she had failed to interpret the lessons of that misfortune correctly. Pitt's Canada Constitutional Act divided Canada into two provinces and granted to each of them an elected

The problem  
of  
Canada



Legislative Assembly and a nominated Legislative Council. But neither the executive government was made responsible to the Legislature, nor was the mercantile subordination given up. Thus the mistake of the policy towards the thirteen American colonies was repeated in Canada. The result of this mistaken policy was seen in the rebellion of Canada in 1838.

It was only after the publication of the Durham Report that England began to change her conception of the Empire. This change was brought about by a combination of several factors. First, the general public of England were heart-sick at the American failure. They believed that the colonies, when sufficiently developed, were sure to break away from the mother-country, just as the ripe fruit drops from the tree. The expenses of the defence of the colonies, and the troubles of protecting them against foreign aggressions caused the British people to think of the colonies as an expensive encumbrance. Hence the British politicians thought that the wisest policy to pursue was to facilitate their development, to place no barrier in the way of self-government, and to enable them at the earliest moment to start as free nations on their own account. Economists like Adam Smith and Ricardo held that colonies were not really advantageous to England. Moreover, the strength of the belief in the idea of self-government also led the British statesmen to grant self-government on the fullest scale to the colonies. These ideas were translated into action by the repeal of the Navigation Acts (1849), by the completion of the free trade programme in England and by the acquiescence of Parliament in the establishment of responsible government in Canada. All these events took place near about the year 1850. Responsible government was introduced in Australasia between the years 1855 and 1875. It was conceded to Cape Colony in 1872, to Natal in 1893, to the Transvaal in 1906 and the Orange River Colony in 1907.

### The British Commonwealth of Nations

The older British Empire may be said to have existed down to the moulding of the Australian Federal Commonwealth in 1900 and of the South African Union in 1909. The advance to full nationhood of Canada and Australia, New Zealand and South Africa, is the supremely characteristic development of the Commonwealth of Great Britain. No imperial system, past or present, could embody a similar group of daughter countries. They are the unique British contribution to the difficult craft of colonial expansion.

The Dominions have long been independent as regards their

internal affairs, if we except the single restraint of the Privy Council in London as the final authority in legal and constitutional affairs. The economic and fiscal independence of the Dominions is absolute. Their taxation is their own; they impose tariffs at will; they lock their doors against British immigrants. And since 1931 the Dominions have held the position of equal partnership with Britain, fixed and defined by the Statute of Westminster. The Statute of Westminster 1931

The Statute of Westminster sets forth the principle that each British Dominion enjoys equality of status within the commonwealth of nations, being in no way subservient to the government of Parliament in London. It provides that the governments, and in certain cases the parliaments, of all the Dominions shall give their approval to proposed measures affecting the Crown or the welfare of the nations concerned. Equality of status

#### IV. Character of the British Empire

The British Empire is at present a complex organization, in which the form of government is of great variety, ranging from the autocratic rule of a Governor, as in Gibraltar, to complete autonomy under a system of fully responsible government in the Dominions. The Empire contains thirteen million square miles, which constitute a quarter of the land surface of the earth. It comprises more than five hundred million inhabitants making up a quarter of the population of the world. Of the 500 millions of people within the British Empire, over 430 millions represent subject peoples of non-European race, held under more or less autocratic rule. Of the 70 millions of the white race, 20 millions occupying the four overseas Dominions constitute  $\frac{1}{10}$ th part of the earth's population but occupy no less than  $\frac{1}{4}$ th part of the earth's surface. The term 'Empire' refers to the whole of the King's dominions, while the expression 'Commonwealth' is restricted to an association, within the Empire, comprising the United Kingdom, and the self-governing Dominions. Empire and Commonwealth

Canada, Australia, New Zealand, the Union of South Africa and the Irish Free State are referred to as the self-governing Dominions within the British Empire. But the relation existing between the United Kingdom and each one of these Dominions is not exactly the same. Thus the preamble to the Status of the Union Act, 1934, declares that it is expedient that the status of the Union of South Africa 'as a sovereign independent State as hereinafter defined' should be adopted and declared by Parliament. The Irish Free State has abolished the Oath of Allegiance to the British Crown, has The Dominions

prohibited all appeals from Irish Courts to the Judicial Committee of the Privy Council, has abolished the post of the Governor-General, and by the Irish Nationality and Citizenship Act, 1935 has deprived Free State citizens of the common status of British subject

Newfoundland was regarded as a Dominion up to the 15th February, 1934 ; but now its status is that of a Crown colony. It is administered by the Governor acting on the advice of Commission of Government, composed of himself as Chairman, three persons drawn from Newfoundland, and three from the United Kingdom. There is no popular assembly and the Legislative Council consists entirely of officials

Southern Rhodesia has not yet acquired Dominion Status, for its native affairs and international relations are still controlled by the Government of the United Kingdom. But in other respects it has got responsible government. Southern Rhodesia is willing to form a union with Northern Rhodesia and the elected members of the Legislative Council of the latter are also in favour of this scheme. If amalgamation is ultimately realized, the Nyasaland Protectorate might be joined to the two colonies.

India forms a class by herself. She is not yet a full and equal member of the Commonwealth. Her defence, foreign relation and many other important affairs are still controlled by the British Government. In Burma too the Governor retains control of defence, ecclesiastical affairs and external affairs. In Ceylon three official members responsible to the Governor administer such matters as external affairs, defence, finance, and justice.

Next comes the Colonial Empire, comprising approximately 19 lakh square miles and 5 crore people of diverse races. To this may be added  $8\frac{3}{4}$  lakhs of square miles, populated by 84 lakh people held under mandates from the League of Nations by the United Kingdom, Australia, New Zealand and South Africa. Approximately 80 per cent of the colonial empire is in the continent of Africa. The units of the colonial empire may be classified roughly as Crown colonies, mandated territories and protectorates. The Crown colonies are territories that have come into the possession of the Crown by conquest, cession, occupation or treaty. Provision for the government of Crown colony is made from time to time in Letters Patent and the Instructions to the Governor. The government of the Crown colonies may be subdivided according to the type of legislature. In the Bahamas, Barbados and Bermuda the legislature consists of an elected House of Assembly and a nominated Legislative Council. British Guiana, Jamaica and Mauritius have Legislative

Councils consisting partly of elected, partly of nominated, and partly of official members but the official members are not in a majority. In the other colonies there is usually a majority of official members. Finally, there are a few dependencies in which legislative authority is vested in the Governor alone. The colonies are usually administered by officials responsible to one of the Secretaries of State. But the Secretary of State has no direct executive authority in the colonies; his power is exercised through the Governor or the Commissioner. The Governor is subject to the closest supervision by the Secretary of State and the Colonial office. But in the colony itself his power is limited only by an Advisory Council whose advice he is not bound to accept. The Governor's chief lieutenant is the Colonial Secretary, who is to be distinguished from the Secretary of State for the Colonies. The Colonial Secretary is in close contact with the Governor, the Civil Service, the Legislative Council and the general public. "It is of the essence of colonial administration that the Government retain final control over the legislature: thus is the ultimate control of Parliament ensured."

Besides Crown colonies there are some Mandated Territories and Protectorates. The Mandated Territories were formerly under the possession of Germany and Turkey. They are administered like colonies subject to the terms of the mandates and the obligation to report to the League each year on their administration.

Mandated  
territories

Protectorates may be divided into two classes—colonial Protectorates and protected States. "The essential characteristic of the Protectorate," writes Keith, "is that the Crown assumes and exercises full sovereign authority, though without annexing the territory. In the case of the protected States the sovereign authority belongs to the sovereign of the State, and not in any sense to the British Crown, and the role of the latter is derived from treaty arrangements with the States which do not confer any sovereignty over them but give powers and duties in respect either of both internal and external affairs, or the latter almost exclusively." The Protectorates of the Crown, except the Federated Malay States, are governed in the same general way as colonies.

Protecto-  
rates

## V. Dominion Status

The Imperial Conference of 1926 clearly defined Dominion Status in the following words:—"Great Britain and the Dominions are autonomous communities within the British Empire, equal in status in no way subordinate to one another, in any aspect of their domestic or external affairs, though united by a common allegiance to the Crown

Definition  
of Dominion  
Status

and freely associated as members of the British Commonwealth of Nations."

### In External Affairs

The Dominions first acquired the right to settle their own commercial policy. In 1879 the right of Canada to conclude separate commercial treaties with foreign countries was recognised

Right to  
conclude  
treaties

During the Great War the Imperial War Conference (1917) recognised the right of the Dominions to a share in the control of foreign affairs. Since 1918 the Dominions have aimed at the abolition of every sign of dependence on England. They signed the Treaty of Versailles as separate nations and became members of the League of Nations. They vote and act independently of England in the League. Since 1920 Canada has had her own representative at Washington. The Imperial Conference of 1926 laid down the procedures of concluding commercial and political treaties by the Dominions. Bilateral treaties, affecting the interests of one Dominion alone, may be concluded with a foreign power, provided that no active obligation of any kind is imposed on any other Dominion without the latter's consent. Multilateral treaties can be concluded at International Conferences alone. Canada entered into separate conventions with foreign Governments regarding the control of radio. In 1932 there arose a case regarding regulation and control of Radio Communication in Canada and in pronouncing judgment on it, Viscount Dunedin held that the Dominion has power to enter into separate agreements with foreign powers. Thus the treaty-making power of the Dominions has been judicially acknowledged.

There is only one limitation on the independent power of settling the foreign policy by the Dominions. The Dominions are included within the British Empire, and so when Great Britain would be involved in any war the Dominions would be automatically involved in war. But a concession has been made to the spirit of independence of the Dominions in the fact that any Dominion which does not like to participate in the war might be in a state of "Passive belligerency." It cannot be said whether in actual practice this nice distinction between active and passive belligerency can be maintained at all.

Position of  
Dominions  
in the case  
of a war in  
which  
Britain is  
involved

J. H. Morgan in his book "Dominion Status" has made a subtle distinction between "external relations" and "foreign relations." Some writers hold that the Dominions, ever after the Statute of Westminster, 1931 can not have any "foreign relations," they can have only external relations. But it may be pointed out that the Status of Union Act 1934 makes it perfectly legal for the Union

Distinction  
between  
External and  
Foreign  
Relations

of South Africa not only to remain neutral in a war in which Great Britain is a party, but also to supply goods to the nation against whom Great Britain might be fighting.

### In Internal Affairs

The internal sovereignty of the Dominions has been recognised by the Statute of Westminster in 1931. The veto power of the Crown or the Governor-General or Governor, as the case may be, cannot be used in practice to nullify a law passed by a Dominion Legislature. The Colonial Laws Validity Act of 1865 laid down that any colonial act which was repugnant to the provisions of any act of parliament should be regarded as null and void. But the Statute of Westminster has repealed this law and the Dominions can now legislate on any matter in any way they like. "It is hereby declared and enacted that the Parliament of a Dominion has full power to make laws having extra-territorial operation." Section I of the statute provides that any further laws regulating the succession to the throne and the Royal style and Titles "shall hereafter require the assent as well of the Parliaments of the Dominions as of the United Kingdom." No act of the British Parliament would be binding upon the Dominions without their consent. The Dominions can regulate their own coasting trade and establish their own courts of Admiralty. The Judicial committee of the Privy Council is in theory the highest court of appeal for the Dominions. But no appeal can be made to it by any subject of any Dominion without the special sanction of the Dominion concerned. Hitherto the post of Governor-General in each Dominion has been filled by an Englishman. But recently an Australian was appointed Governor-General of Australia. All these changes point out the virtual independence of the Dominions.

But the crucial point regarding independence is whether a Dominion has got the right to secede from the Empire. Keith is of opinion that the Dominions being "autonomous communities within the British Empire" can not legally secede, but the Dominion Legislatures are constitutionally capable of passing any law, including separation from the Empire. Keith held in 1916 that "If it is really the will of a Dominion to sever themselves from the Imperial control and to set up as an independent power, it is impossible to believe that the Imperial Government would forbid the carrying out of this desire, though it would doubtless take steps to secure that the desire was a deliberate one, representing the decision of a real majority."

The Statute of Westminster did neither confirm nor deny the right of Dominions to secede from the Commonwealth. It recognised no official bond between members except the Crown, and that might mean anything or nothing, for the King being a

Significance  
of the  
Statute of  
Westminster

Right of  
secession

constitutional Monarch must rule by the advice of his Ministers in Ottawa and Canberra (capital of Australia) as much as by the advice of the Ministers in Westminster. If the former were to advise the secession of their nation from the Commonwealth presumably His Majesty could put nothing in their way. This would be specially applicable to the Union of South Africa where the Royal right to disallow Acts has in 1934 been formally abolished. Keith points out that the Statute of Westminster was approved by both houses of Parliament of the Dominion of Canada on the understanding that it did not derogate from the right of any Dominion to secede.

"Economically and socially" it was declared in the United States Department of Commerce Report of 1924, "Canada may be considered as a northern extension of the United States." "Serious-minded Australians" declared Prime Minister Bruce of Australia in 1925, "are beginning to wonder whether we are safe in depending solely on the British Navy." Nor is it merely a question of defence. Now financial bonds between the U. S. A. and the British Dominions have been forged. The U. S. A. has displaced Britain as the chief foreign investor in Canada. In 1925 Australia, previously financed exclusively from London, drew a loan of 100 million dollar from New York. "The Dominions", said General Smuts in 1934, "have even stronger affiliation towards the U. S. A. than Great Britain has. There is a great community of outlook, of interests and perhaps of ultimate destiny between the Dominions and the U. S. A."

## VI. The Abdication Crisis and the Dominions

The Statute of Westminster empowering the Dominions to approve or disapprove the proposed measures affecting the Crown was put to test in the abdication crisis of December, 1936. King Edward proposed that he would like to contract a morganatic marriage with the twice-divorced woman, Mrs. Simpson, by which the issue of the marriage would be excluded from succession to the throne. But there is no morganatic marriage in English law. Mr. Baldwin, the then Prime Minister of England, consulted the Dominion Governments by cable and telephone. There was no time for a summoning of Dominion Parliaments. The Statute of Westminster provides that 'any alteration in the law touching the succession to the throne or the royal style and titles shall hereafter require the assent as well of the Parliaments of all the Dominions as of the Parliament of the United Kingdom'. But, the alteration of the succession, according to Keith, could be automatically effective in all the Dominions, without the expression of the assent of their Parliaments, because the preamble quoted above

Peculiar  
case of the  
Union of  
South Africa

The problem  
before the  
Common-  
wealth

is only a declaration of constitutional propriety, and not of formal law. Canada, however, endorsed the abdication by means of an executive order-in-council and the Canadian Parliament in the new session passed an one-clause bill altering the succession to the throne in accord with the British Act. <sup>How it has been solved</sup> South Africa merely conveyed to London the assent of the Union. The Australian Parliament alone found itself in a position to adopt a resolution approving the Abdication Act on the same day as the passing of the bill at Westminster. De Valera took advantage of England's difficulty by speedily putting through certain changes in the constitution of the Irish Free State. But he promptly accepted the new king. The action of the different Dominions show the working of the Statute of Westminster.



## CHAPTER XXI

### POWERS AND FUNCTIONS OF THE STATE

#### I. Is the State only a means to an end or an end in itself ?

The Hindu philosophers of ancient India regarded the Rastra or the state as a great means to the realisation of the highest end. To them the individual was an end in himself and his self-realisation was the highest goal of social existence. The individual could realise himself in and through the state. Dharma, Artha and Kama, known as Trivarga could be attained through political discipline (Rajadharma) and Moksha or Nirvana depended on the proper realisation of the worldly prospects of life.<sup>1</sup>

The Hindu  
conception  
of the  
State

The Greeks considered the State as an end in itself. Aristotle compares the state to the human body and the citizens to the bodily organs, because the individual is not full and complete without the State. The individual, according to him, is not only as dependent on the state as a hand or foot is dependent on the body, but also exists only in its life, and has no meaning or existence apart from its life. This conclusion he states in the proposition that the "State is prior to the individual."

The Greek  
view

Hegel regards the State as a collective person, a majestic being, a sort of God whose thoughts are not our thoughts and whose ways are not our ways. The State has a mind which is more real than the mind of its members and which works in history towards the fulfilment of its own purpose. Individuals are merely its temporary instruments, and epochs are but the revelations of its creative will.

The  
Hegelian  
concept of  
the State as  
a mystical  
entity

But there can be no rational justification for attributing such supernatural qualities of the state. The state is an organization created by the community, has no right and no welfare of its own apart from the community. The state is only an instrument to serve the purposes of its members. MacIver has well observed that the Hegelians regard humanity as something more than men, nationality as something more

The State  
can not be  
an end in  
itself

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<sup>1</sup> Thus says the Mahabharata

सर्व्वं स्य जीवलोकस्य राजधर्मम्. परायणम् ॥

त्रिवर्गो हि समासक्तो राजधर्मेषु कौरव ।

मोक्षधर्मश्च विषष्टः सकलोऽत्र समाहितः ॥

than the members of a nation. They suggest that it is possible to work for humanity otherwise than by working for men, and to serve nationality otherwise than by serving the members of a nation. The Totalitarian State of Italy and Germany has adopted the Hegelian view of the State to a certain extent. Thus says Mussolini, "We were the first to state, in the face of demo-liberal individualism, that the individual exists only in so far as he is within the State and subjected to the requirements of the State and that, as civilisation assumes aspects which grow more and more complicated, individual freedom becomes more and more restricted."

Mussolini  
upholds the  
Hegelian  
view

... The sense of the State grows with the consciousness of Italians, for they feel that the State alone is the irreplaceable safeguard of their unity and independence; that the state alone represents continuity into the future of their stock and their history. A fundamental difference thus exists between the democracies and the dictatorial governments regarding the concept of the state. The ancient Indian tradition and our system of liberal education make it impossible for us to subscribe to the Hegelian view of the state.

## II. The ends or purposes of the State

Aristotle justifies the state as a necessary agent for securing man's truest happiness. He conceives the truest happiness to consist in the complete rational exercise of one's powers. Happiness is thus a different thing for beings differently constituted. To the plant or to the animal it consists of the simple satisfaction of physical and material needs. To rational man, however, it means in addition to this, the proper exercise of all those artistic, ethical and intellectual faculties which belong to them as the highest products of nature. Such a life, according to Aristotle is possible only in that complex order called the state and this for three reasons :—

State  
securing  
happiness

In the first place it is only through the establishment of a supreme political power that an orderly and peaceful existence is rendered possible. Secondly, it is only in social and political life that there is furnished that diversity of interests and that variety of life which are essential to the complete life. Thirdly, the state is required for the men's happiness in that it is through education and training which public life affords that there is created in the citizen the ability and the moral disposition to live the good life.

Good life

Garner is of opinion that there are three different degrees of ends of the state namely —(1) the original and primary, (2) secondary and (3) ultimate and highest. He observes. —"The original, primary and immediate end

Primary  
object of  
State

of the state is the maintenance of peace, order, security and justice among the individuals who compose it. This involves the establishment of a regime of life for the definition and protection of individual rights and the creation of a domain of individual liberty, free from encroachment either by individuals or by associations, or by the government itself. No state which fails to secure these ends can justify its existence." The state is one of the many associations in the community. Each association pursues its ends or objects in its own way, but it is the state which gives a form of unity to the whole system of social relationships. It is the purpose of the state to deliver men from the grosser perils of competitive stress in the endless struggle of their self-centred pursuits.

The secondary end of the state is to secure national welfare, the development of the national genius and the national life. The state must undertake to promote those common interests which can not be performed by mere individual efforts.

The highest end of the state is the promotion of the civilization of mankind at large. If a state is bent upon aggrandising itself at the cost of other states it will not only inflict injury on others but also will ultimately do incalculable harm to its own citizens

### III. Limits of political control

It is necessary to discuss first what are the limits to political control, to know what things are outside the sphere of the state before we can understand the true business of the state. If the purpose of the state is to develop the personality of its citizens it must respect personality. With a view to fulfil that purpose the state should not seek to control opinion, no matter what the opinion may be. But the state should not tolerate any opinion which urges law-breaking, because the first business of the state is to maintain the fundamental order which finds expression in law. Such a restriction, however, does not jeopardise the liberty of opinion, because a man may denounce a law to his heart's content while still recognizing the duty to obey it. In pursuance of its purpose of developing personality, the state should not, according to MacIver, exercise the dangerous office of censor, "an office which treats men as though they were children"

The State can not turn all moral obligations into legal obligations. The sphere of morality is distinct from the sphere of political law. There is one legal code for all, but moral codes vary as much as the individual characters

of which they are the expression. Sometimes it is seen that some religions or bodies ask the state to coerce those whom they themselves cannot persuade

The state cannot directly change custom and fashion. Customs have not been created by the will of the state, and the state can not destroy the rooted customs of the citizens. The failure of the Sarda Act prohibiting child marriage shows that custom, when attacked, attacks law in turn. But the state can change the conditions of life out of which a particular custom had originated. Moreover, in cases of clear necessity as for example in child sacrifice or the Sati rite, the state may adopt an exceptional remedy for a dangerous disease.

The state cannot create culture, because the culture is the expression of the spirit of a people or of an age, and it is sustained by inner forces far more potent than political law.

A clear understanding of the limitations of the power of the state is of paramount importance now-a-days, because the totalitarian states of Russia, Italy and Germany have set before themselves the task of regulating opinion, creating new morality and evolving a new culture. Under the First Five-year Plan in Russia the only subjects allowed to be treated in literature were planned socialism, industrialization and collectivization of agriculture. But in 1932 the rigours of censorship were relaxed. In 1937 on the occasion of the centenary of death of Pushkin, a revival of the literary classics of Russia was noticeable. Pushkin who had been denounced as "a writer of the nobility," was recognised as the pure and abundant source of all Russian literature of the 19th and 20th centuries

#### IV. The Functions of Government

The functions of government are classified by Garner as (1) essential, normal or constituent functions, which include those which must be performed by every government; (2) natural but unnecessary functions which the state may leave unperformed or unregulated without abandoning a primary duty; and (3) functions which are neither natural nor necessary; these include those which may be performed by private enterprise at less cost. Examples of such functions are the conduct of railway traffic, and establishment of experiment stations, liquor dispensaries, art galleries, banks, universities of learning etc. To call these functions neither natural nor necessary is simply pedantic.

A better classification has been suggested by Willoughby and Gettel. They have divided the functions of government into essential and optional. The optional functions have again been subdivided into socialistic and non-socialistic.

"It is admitted by all," says Willoughby, "that the state should possess powers sufficiently extensive for the maintenance of its own continued existence against foreign interference, to provide the means whereby its national life may be preserved and developed, and to maintain internal order including the protection of life, liberty, and property. These have been designated by the essential functions of the state, and are such as must be possessed by a state, whatever its form." The functions necessary for the maintenance of peace and order are to provide for the protection of person and property, to fix the legal relations of the family, to regulate the holding, transmissions and interchange of property, to determine contract rights and liability for debt, to define and punish crime and administer justice in civil cases. To carry out these functions funds are necessary. So the raising of taxation and the expenditure of revenue are also the essential functions of the state. In order to protect the citizens against foreign aggressions army, navy, warships, ammunitions of war, arsenals etc., are necessary. It is, therefore, absolutely necessary to maintain these also.

Optional functions are those which are performed by the state, not because their exercise is a *sine quâ non* of the state's existence, but because their public administration is supposed to be advantageous to the public. They are such that if left in private hands they would either not be performed at all, or poorly performed. Of these functions some are non-socialistic and some socialistic in character.

Non-socialistic functions are those which do not restrict the field of private enterprise and at the same time confer great benefits on the people. Examples of such functions are the maintenance of scientific and statistical bureaus, the care of the poor and helpless, the protection of public health and morals, and the "conduct of various undertakings which would be unprofitable as private ventures but which are required by the common interest."

Socialistic functions are those which can be performed either by private enterprise or by the government. Examples of such functions are the construction of railways, roads, bridges, excavation of canals, maintenance of markets, docks and piers, management of coinage, currency and banking operations.

These theories of the functions of government were promulgated under the influence of Individualist philosophy. Since the war of 1914-18 it has come to be recognised that the state can not promote good life where there is vast inequality of income among the different classes of society. It is necessary to bring about some sort of economic equality through the agency of the state. The first business of the state, indeed, is to maintain order, but order does not merely mean prevention of confusion and chaos. To insist on order without any qualification is to make of the state a 'police-state.' The true political conception of order extends to the protection of the weak against the strong. Protection includes the establishment of a minimum standard of living, so that the mere requisites of health and decency shall not be denied to any merely because of the accident of birth or misfortune. The state stands for the common interest of all. It must promote the common interest by protecting the consumer against the monopolists, the worker against the exploitation by capitalists, the small businessmen against the unfair competition of large scale business, and the 'big business' against the competition of the foreigner. The modern state is no longer a mere 'police-state' simply maintaining law and order and protecting the life of citizens against foreign invasions and internal commotions. It has become in every country the 'welfare state'. It is now recognised by all schools of political thinkers that the business of the state is to maintain order, not for the sake of order, but for the sake of protection, conservation and development.

The state must protect the community against the encroachments of monopolists, against social disturbance and economic dislocation through economic crises, and against racial, religious and partisan pressure. It should promote and develop the physical conditions of life by regulating hygienic requirements, and the housing, occupational, and recreational conditions of health. It should conserve and devise means for the utilization of the natural resources. With a view to develop culture it should establish national museums, assist scientific research and promote non-controversial cultural aims. The interests of the community require that the state should promote industries, agriculture and commerce in such a way as to benefit all classes of citizens. Both the Laissez-fairist and the Collectivist agree that these are desirable business of the state, but they differ as to the method by which these results can be obtained. Now we proceed to give an exposition of the views of these two schools.

## V. The Laissez-Faire Theory

Individualism as a political doctrine had its origin in the

latter part of the eighteenth century as a reaction against the evils of over-government in Europe. It was one of the leading tenets of the Physiocratic school of economists that the state ought not to interfere with the economic activities of the people. They demanded freedom of trade and industry. Adam Smith's "Wealth of Nations" gave stimulus to the doctrine. Later the doctrine was defended by various other English economists, notably Cairnes, Ricardo and Malthus. It also counts among its supporters philosophers like Mill, Spencer and Sidgwick. These writers greatly emphasize the importance of the so-called private rights of property, life and liberty and hold that the province of government should be strictly limited to the protection of these rights.

Growth of individualism

Mill maintains that "the sole end for which mankind are warranted individually or collectively, in interfering with the freedom of action of any of their number, is self-protection—that the only purpose for which power can be rightfully exercised over any member of a civilised community, against his will, is to prevent harm to others." The German writer Humboldt holds that the state should pursue no other object than that which the individuals can not pursue of themselves, namely, security. Spencer enunciates his famous law of justice in the following words:—"Every man shall be free to do that which he wills, provided he does not infringe the equal freedom of any other man."

Law of Justice

It is argued that consideration of justice requires that the individual shall be let alone by the State in order that he may realise fully and completely the ends of his existence. It is believed that every restriction upon the free action of the individual tends to destroy his sense of initiative and self-reliance and weaken his responsibility and character. "The true end of man, or that which is prescribed by the immutable dictates of reason," observed Humboldt, "is the highest and most harmonious development of his powers to a complete and consistent whole." Over-government, adds Humboldt, not only diminishes freedom, but superinduces national uniformity and a constrained and unmatured manner of action, by its tendency to reduce society to a dead level. The highest civilization, say the *laissez faire* advocates, has been developed under individualism, a system which has produced more material and educational progress than could even have been produced under paternalism.

Evils of restriction upon free action

Individualism promotes highest type of civilisation

The theory has been supported on the so-called scientific principles too. It is in harmony with the principle of evolution.

It has been maintained that each individual should be left alone to work out his destiny, so that there might be the survival of the fittest. If the government does not artificially prop up the weak, the unfit elements of the society would be automatically eliminated

It leads to  
the survival  
of the fittest

The upholders of Individualism put forward arguments also to show that the policy of non-interference is economically sound. Thus Carnes observes. "Laissez-faire assumes that the interests of human beings are fundamentally the same, that that which is best for the interests of one is the best for others, that the individual knows his interests in the sense in which they are coincident with the interests of others and that in the absence of coercion he will in this sense follow them." The Individualists believe that unrestricted competition will enable the producers to produce at the least cost, the consumers to buy at the lowest price, and the labourers to dispose of their labour to the best advantage. Thus competition will develop the highest human possibilities by enabling each individual to do that for which he is best fitted.

Every  
person  
knows his  
interest best

The Individualists also adduce many historical examples to show that the policy of excessive regulation by government has been mischievous and detrimental to the interests of society. Mill is of opinion that the great majority of things are worse done when done by government than when done by individuals. History bears witness as to the attempts made repeatedly by the state to fix prices of food and clothing and of many other commodities, to regulate the wages of labour and restrict certain trades exclusively to members of the guilds. The extent to which the governing classes interfered with the freedom of industry and the mischief which that interference produced were so remarkable, as Buckle puts it, as to make thoughtful men wonder how civilization could have advanced in the face of repeated obstacles.

Government  
work ineffi-  
cient

Lecky summarises the disadvantages of governmental interference in the following words.—"There is the weakening of private enterprise and philanthropy; a lowered sense of individual responsibility; a diminished love of freedom; the creation of an increasing army of officials, regulating in all its department the affairs of life; the formation of a state of society in which vast multitudes depend for their subsistence on the bounty of the state. All this cannot take place without impairing the springs of self-reliance, independence, resolution, without gradually enfeebling both the judgment and the character. It produces also a weight of taxation which, as the past experience of the world abundantly shows, may easily reach a point that means national ruin."

Disadvan-  
tages of  
governmen-  
tal interfer-  
ence



Against these attacks on the policy of state regulation and interference it may be pointed out that the state is not a necessary evil and that the functions of the state are not merely repressive in character. According to Spencer the assumption by the state of the right to enforce sanitary regulations, as for instance, those of drainage and of preventing the spread of contagious diseases, would be unwise. He bewails the interference of the state in the regulation of factory labour and employment of women and of children and condemns even the monopolization by the state of the sole right of coining money. But it is obvious that in matters of compulsory education, sanitation and the like, the very persons upon whom coercion is needed are least qualified to judge the value of the conduct such compulsion demands. These people do not know their interests and must be compelled, in the larger interests of society to conform to certain regulations.

State regulation is necessary to help and protect the poor

The chief fault of the *Laissez-faire* advocates is that they belittle the benefits conferred by the state and extol individualistic enterprise by exaggerating the evils of state regulation. In short, they over-emphasize the importance of the man at the expense of the group.

The arguments of the *Laissez-faire* theorists are based on the past mistakes and abuses of the Government. "It is however wholly wrong to take the position," as Garner has put it, "that because governments made mistakes in the past or because their agents have sometimes abused the powers entrusted to them, they can not be trusted in the future."

Mistakes may not be repeated

The state is not necessarily hostile to freedom; an extension of state activity does not imply that the liberty of the individual would be destroyed. Under well-organised and wisely directed state action individuals find ample scope for the development of their moral, physical and intellectual capacities. The state helps to increase opportunities and thereby develop individual's latent abilities.

The State is not hostile to freedom

Moreover, genuine competition is possible only where the contesting parties possess comparative equality of strength. If they are unequal in strength, as in the case of the struggle between Capital and Labour, the weaker party would be simply crushed out of existence. As regards the pseudo-scientific argument of survival of the fittest, it may be pointed out that the policy of allowing the physically weak or educationally backward people to be ruined is manifestly abhorrent. The struggle for existence does not lead to the survival of the fittest in the highest sense of that word.

Competition presupposes equality

In conclusion we may state that as industrial society develops

and increases in coherence and complexity, the social interests—those affecting the people in general—will become more numerous and important and an enlightened policy will demand the subordination of the individual interests to the common welfare of the community. But this does not mean that the individual should subordinate all his purposes to the state. A wide opportunity for purely voluntary grouping of individuals and for the constant making and adapting of associations as new common purposes develop, is essential to positive realisation of the common good.

Individual interest to be subordinated to common welfare

## VI. Break-down of the Laissez-faire Theory

In the latter part of the nineteenth century technical revolution, standardization of products, scientific management, and organization of marketing increased the scale of business organization. As the size of firms began to increase, some measure of monopolistic control was assumed by them. This weakened the economic power of the consumer. But at the same time the extension of democratic principle was vesting the consumer with political power. The consumer now demanded that the intervention of state should not be confined merely to negative control like the passing of factory acts but also be applied to the positive promotion of economic ends. The attempt to maintain a clear line of demarcation between economic and political affairs, on which the doctrine of Laissez-faire rested, became thus impracticable.

Extension of franchise

Jeavons and the Austrian school of economists gave a new orientation to the Laissez-faire theory. They do not hold like Adam Smith and Ricardo that the self-interest of each producer makes for the maximum production of economic values. They argue that the free play of consumers' demand under a competitive system leads to the production of goods and services in such a way as to create the maximum sum-total of human satisfactions. They dislike state intervention because it interferes with the free expression of consumers' demand by altering the conditions of supply and price. The basis of the new Laissez-faire theory, is that the consumer is the best judge of his own satisfactions, and that these are measured by the prices which he is prepared to offer for the various goods put forward for sale. But if incomes of consumers are unequal the price-offers are not measures of equal satisfaction expected by them; and hence the free play of consumers' demand cannot result in the maximum sum-total of satisfaction. The state, therefore, should aim at a re-distribution of incomes through legislation, setting up a minimum wage or through highly progressive system of

New orientation of Laissez-faire theory

Need of equitable distribution of income

taxation. Even when there is a satisfactory distribution of income within the community, the state has to intervene in raising the price of such articles as alcoholic liquors, the excessive consumption of which is not at all desirable and in reducing the price of articles like water.

Moreover, in the modern industrial world, where there is an increasing tendency towards combination among producers of almost every type, price-fixing has become more and more a function of production rather than of demand. In the case of articles whose demand is elastic, the combination of producers fixes the price by adjusting the quantities of goods which they place on the market to their knowledge of the condition of consumer's demand. The state has therefore to regulate and control the combination of producers in the interests of consumers. It is now being recognised that any state in which the economic sphere is left largely uncontrolled is necessarily a class society tilted to the advantage of the rich. Such a state, therefore, lacks that necessary basis of unity which enables men to compose their differences in peace. At present there seems to be unavoidable necessity of government regulation—whether in the interests of manufacturers, growers, workers or consumers—of commercial, financial and industrial relationships. To-day the consumer appeals to the state for protection against monopoly, the worker demands safeguards for labour, the small businessman cries out against unfair competition while 'big business' seeks tariffs against the foreigner. The state feels the constant impact of opposing economic forces. It can not stand still. It must enforce regulation, but the regulation may be effected either under Capitalism or under Socialism.

## VII. State Regulation under Capitalism

We find democratic states like the U. S. A., under the guidance of President Roosevelt and France under the Leon Blum ministry as well as Fascist States like Italy and Germany alike undertaking economic planning while retaining the framework of capitalism. All these states are trying to regulate by means of a comprehensive plan all the vital matters which have in the past been settled by individual or group competition. According to their plan, competition is to be eliminated but the ownership and management of majority of industries are to be left in private hands. The state, however, through appropriate organs is to decide how much of each kind of goods to produce, what prices to put upon them, what pay to accord to their producers, how much to set aside for capital accumulation, and how much to

Price  
fixed by  
producers

State  
intervention  
becomes  
unavoidable

Economic  
planning  
vs  
competition

Comprehen-  
sive  
regulation

devote to immediate consumption. The difference of such a system with Socialism is that it seeks to preserve the existing class-divisions and inequalities of income by maintaining private ownership in the means of production

Prof. G. D. H. Cole thinks that capitalist planning is a highly paradoxical idea. If the state directs production according to a comprehensive plan the capitalist shareholders and directors become superfluous and functionless because they remain no longer even nominally responsible for directing the course of production and investment. According to him, "the fatal weakness of controlled capitalism is that, moving still within the orbit of the profit system, it is compelled to subordinate its use of the available factors of production to the exigencies of private profit-making. This causes it to look with very different eyes on the two 'key' kinds of income—profits and wages. For, whereas profits appear to it as an undiluted good—the stimulus par excellence which causes production to be undertaken—as well as a necessary element in the available supply of purchasing power, wages on the other hand appear to it evil as well as good. They are good, in that they are a form of purchasing power, necessary to create a demand for the products of industry; but they are also bad, in that they are a cost which the businessman has to incur, and therefore a deterrent to production. For it inevitably seems to the businessman that the higher the wages, the less is the prospect of profit, and the smaller the incentive to expand production to the furthest point compatible with the supply of productive resources."

Dilemma in  
capitalistic  
planning

From the stand-point of pure theory it seems that the argument of Prof. Cole is unassailable. But it can not be denied that Germany, Italy, and the U. S. A. have been able to increase their productive capacity tremendously even within the framework of Capitalism

Success of  
capitalistic  
planning

### VIII. Socialistic or Collectivist theory of Functions of the State

While the Individualist wants to restrict the functions of the state to the narrowest possible limits, the Collectivists or Socialists hold that the government control of the means of production and distribution is essential to the welfare of individuals and society. The term Collectivism has been used as the general concept of which Socialism, Communism and Anarchism are special variants. Collectivism seeks to place under the control of the state not only the economic enterprises of individuals, but also the activities of a multitude of economic groups, corporations and monopolies, trade-unions and co-operative societies and leagues of producers and traders. The term

Collectivism  
and  
Socialism

Socialism has left a deeper imprint on the public mind than Collectivism. Socialism implies an organisation, which by substituting collective or government control and ownership for individual ownership and management of the instruments of production and distribution, aims at securing the general well-being as distinct from the benefit of the few. In other words, they contend for a maximum rather than a minimum of government. There are different schools of Socialism, but all schools equally agree that the task before Socialism, is not merely economic reconstruction, but also educational, ethical and aesthetic reorganization of society.

The Socialists claim that the economic needs of the community will be accurately estimated under Socialism and the available land, labour and capital carefully apportioned, so that just the quantity of each kind of goods required will be produced. The duplication of plants and the excessive production of particular goods, now so common, will be avoided; the expenses of advertising and competitive selling will be saved, and finally, the production of goods that are harmful rather than beneficial to those who consume will be suspended. Unrestricted competition, says the opponents of Individualism, begets overproduction, cheap goods, unemployment and lower wages. The only remedy lies in the abolition of competition and substitution of co-operative principle, under which equality of opportunity and equality of reward will be secured.

Man being naturally weak and inclined to depravity, he needs to be guided and aided by the state and protected against his own inherent frailties. According to the Individualist theory of the function of government, the state should not interfere with the drinking of wine by individuals at their own home. But the Collectivist theory of function of the state makes it imperative on the government not only to control but also to prohibit drinking altogether under certain circumstances. The benefits of a programme of prohibition are so far-reaching for national welfare in India that the government should not hesitate in interfering with the so-called rights of individuals to get drunk. Dr. P. J. Thomas of the Madras University has described the results of introduction of Prohibition in Salem District in the following words: "The spending power formerly used for drink has been devoted largely for a more varied and adequate diet, better clothes, and more amusements. There has been a significant change in the items of food used by the working classes. The expenditure on tea and coffee, vegetables, curds, ghee, oils and meat has increased. The whole of the extra spending power, however, has not been used for immediate consumption; several of the former drinkers have saved sums for

Economic  
planning can  
be under-  
taken

Case for  
prohibition

purchasing ornaments and brasswares and for paying debt. Borrowings among labourers have been less this year, largely due to the banishment of drink from marriage and other feasts. This will have healthy reactions, specially among agriculturists."

The doctrine of Socialism, moreover, is in harmony with the organic theory of the nature of the state, in accordance with which the state is to be regarded as an organism and not a mere aggregate of individuals. Finally, it is argued by the Socialists that the state has already abolished competition in certain fields. Government management and control of postal service, coinage, telegraphs, railways and other industries of a public nature have all shown the triumph of state management over individual management. Why should the state not go further and occupy the entire field. Collective ownership is supposed to be more democratic and its advocates claim that it is the only system under which a full and harmonious development of individual character can be secured.

Collective ownership is democratic

The Collectivists, however, over-estimate the capacity of the state. If the state owns and manages the means of production, the difficulties of administration would be enormous. Such questions as the apportionment of labourers among the various departments of industry, the assignment of values to products and to labour, the quality of goods to be produced, the relative proportion of capital goods to consumers, can be solved only by men of highest administrative ability. It is not easy to find such men. Moreover, serious dangers would arise because of the opportunities for corruption, intrigue and personal spite. The state might be also reluctant to take risks of trying new experiments.

The capacity of Government officials is limited

Besides the objections to Socialism on economic grounds, there is a strong political argument against it. It will greatly restrict individual freedom, and thereby bring deterioration of individual character. "In the absence of all self-interest and incentive" observes Garner, "individuals would have to be disciplined and driven to the discharge of their duties, and in the place of freedom we should, according to some writers, have virtual slavery." But it must be pointed out that though the arguments against a complete scheme of Socialism are strong, yet all modern states have assumed many Socialistic functions.

It restricts individual freedom

Regarding the merits of the Individualistic and Socialistic theories of state functions we may say that neither to-day represents the generally accepted view of sphere and duty of the state or the actual practice. At no point is it possible to detect a hundred per cent Individualism untouched or unmodified by Socialism or a hundred

Variety of conditions in different states

per cent Socialism supremely indifferent to the impacts of Individualism and its counterpart, Capitalism. The question of deciding what the state should and what it should not do is one which must be determined by the nature and circumstances of each individual case.

Prof. Garner has rightly pointed out —“If any general rule may be formulated, it must be deduced from a consideration of the question whether the purpose of state intervention in a given case is for common good” and “whether it can be done without doing more harm than good.” If a purpose is likely to be better served under state action than under private enterprise, “no valid objection can be raised to it because it violates some abstract principle of individual liberty or some doctrine of natural rights”.

## IX. Collectivist Activities in Modern States

The policy of Laissez-faire or non-interference of the state led to such abysmal misery of the workers in all the industrial states, that the conviction has now grown that governments should take a greater and greater share in ordering the economic welfare of society. Collectivism or Socialistic control of some industries is now a well-established form of business organization. The state has taken control of those industries which are of vital interests to the nation. Thus all national states own and operate their own postal system, and most of them the whole or part of their railway systems and forest lands. The manufacture of arms and ammunitions is also under state control in most of the states. In

Evil  
consequences  
of  
Laissez-faire  
policy

Russia the state is managing all industrial establishments and many agricultural farms. Besides these industries under state control, many municipalities own and operate their own octopoid industries. There are some cases in which the state does not own and control the business but directs it. Such are the Federal Reserve Board and the Inter-state Commerce Commission in the United States.

Collectivist  
activities  
of modern  
states

The State has taken the weak and the poor under its special care. The welfare of the poor man and the labourers has been the object of a host of Factory Acts—regulating hours and age of employment, enjoining safe and sanitary conditions of work, appointing factory inspectors, and fixing minimum rates. Laws have also been passed securing better housing and sanitation to the poorer classes. The establishment of extensive free education and granting of free medical benefits are regular features of every modern state. There are also national insurance schemes for sickness and

Measures to  
help the  
poor and the  
weak

unemployment and old age pensions in most of the progressive states of the west. The state is taking a special interest in promoting commerce and industries by imposing protective duties and granting bounties.

The state in all the modern countries is carrying on vast work of constructive enterprise whose benefits will be shared by future generations. It is enforcing town-planning so that the sprawling, ill-built, congested cities might no longer disfigure the face of the country. It is taking steps to conserve the forest resources and to enhance their beauties. It is carrying on fruitful experiments on irrigation, the utilization of the soil, the breeding of plants and animals, the control of insect pests. Many provincial governments in India are enforcing a scheme of consolidation of holdings and in near future will undertake crop-planning. Every civilised government is trying to mitigate the severity of economic fluctuations by its control over currency, credit and its own expenditures. Economic planning with a view to make each country economically self-sufficient has become a regular feature of the programme of almost all the states of the present day. <sup>Carrying out constructive programme</sup> The Soviet Government is carrying out its third Five Years' Plan with the aims of increasing the total material wealth in the country and of insuring general prosperity for all citizens to a more or less equal degree. The Nazi Government in Germany carried out a plan to promote the economic nationalism of a military state. The whole plan was based on war-time economy—the production of the weapons of destruction and defence, and the security of war supplies like cloth, food, chemicals and raw materials. The plan of the Fascist Government in Italy was modelled on similar lines with minor modifications. The Roosevelt Plan in America aimed at regulating the distribution of national dividend between the various factors of production. The profit motive in industries was limited with a view to effect a more equitable adjustment of national income and to subordinate individual interests to the needs of the community. Every kind of planning presupposes a complete control of the planning authority over all factors of production and over the fiscal policy of the State. <sup>National Planning</sup>

In India the Congress Working Committee resolved on the 25th July, 1938, that an expert committee should be appointed "to explore possibilities of an All-India industrial plan."

In pursuance of this resolution the National Planning Committee and its various sub-committees have been appointed. But in India the Congress has at present authority over eight provinces only. It has no control over the Central Government, which alone can regulate fiscal and mone- <sup>Idea of National Planning in India</sup>



tary policy. Under the present circumstances the idea of carrying a National Planning seems to be premature.

## X. Functions of Government in War-time

The Pluralists regard the state as one of the associations of the community and hold that like other associations its power should be relative to function. The state, in their opinion, should not exercise powers which may overwhelm other aspects or associations, like the church, trade union, cultural institutions etc, which fulfil other functions. But in the time of war the state does exercise the power of life and death not only over individuals but also over all associations existing within its jurisdiction. "In declaring war," observes MacIver, "the state puts a particular political object above the general ends of the family, of the cultural life, of the economic order. To secure this purpose the state disrupts the family, breaks the fraternities of science and art, confounds the church, profoundly disturbs the economic system, ruins the commerce of nations, surpasses all cultural influences, and inculcates a morality of violence, robbery, falsehood and murder, as between its members and those of its enemies, which is the direct contradiction of that on which society is founded."

During the War of 1914-18 Governments in all the belligerent states exercised strictest control over every aspect of life.

Effect of  
War on the  
functions of  
Government

Similar regulation and control have been effected now on the outbreak of the present war. Governments in belligerent countries are directing and controlling production in almost all the industries with a view to make the best use of the available workers and materials. In Germany, the Nazi Government has forced women and children to work for more than ten hours a day and has prohibited the consumption of many of the necessaries of life and decency like milk, butter and soap. If the war continues for a long time it is pretty certain that even in India restrictions will be put on the consumption of articles like coal, petroleum, iron and steel wares etc. War makes it impossible for a Government to adhere to the Individualist Theory.

## CHAPTER XXII

### MODERN TRENDS IN POLITICAL THOUGHT AND MOVEMENT

#### I. The State in Socialist and Fascist Theories

Many influential schools of thought in the modern world are seeking to transform the character of the state radically. The Socialists as well as the Fascists are dissatisfied with the traditional philosophy of the state. Both the <sup>Two conflicting views</sup> schools denounce the inaptness of legislatures of democratic countries for dealing effectively with questions of commercial, financial and industrial relationships. But they differ fundamentally in their ideal of the state. The Fascist Governments of Italy and Germany believe in centralization of authority which will lead to the establishment of the Totalitarian State. They hold the state to be omnipotent and as such capable of regulating every aspect of social life including national economy, art, religion, culture and education. The Soviet Government in Russia professes to set up dictatorship of the working class, while the Fascist Government does not dispense with the capitalist class; but in practice the state in Russia had proved to be as much Totalitarian as it is in Germany and Italy.

There are different schools of Socialism and these schools differ largely in their attitude towards the state. State Socialism seeks to establish state ownership of the means of production and state control of future production. Guild Socialism, Syndicalism, and Industrial Unionism may be <sup>Socialist theories</sup> treated as types of co-operative Socialism which distrusts the state and fears the over-development of bureaucracy. They would like to base the industrial system upon the organization of independent producers.

In the view of Marxian Socialism the state is simply an organ of economic exploitation. Marx holds that the state is a new institution, unknown in the feudal age. In the opinion of Engels the modern state is "nothing more <sup>Withering away of the State</sup> than a committee for the administration of the consolidated affairs of the bourgeois class as a whole." Both Marx and Engels believe in the theory of the withering away of the state in course of time. They explain the process of withering away of the state thus. "We are now rapidly approaching a stage of evolution in production, in which the existence of classes has not only ceased to be a necessity, but becomes a positive fetter on production. Hence these classes must fall as inevitably as they once arose. The state must irrevocably fall with them. The

society that is to reorganize production on the basis of free and equal association of producers will transfer the machinery of state where it will then belong : into the Museum of Antiquities, by the side of the spinning wheel and the bronze axe." In Russia, where the society is being built up largely according to the Marxist philosophy, the state is not showing, however, any sign of withering away. Stalin believes that the withering away of the State can not take place in the near future

We have to day at one end of the scale the conception of the Totalitarian state, on the other that of Anarchism. Anarchism holds the historical state to be the ultimate source of exploitation and maintains that no reasonable social order can be established without its total destruction. But under the stress of post-war circumstances Anarchism, Syndicalism and Guild Socialism have lost much of their hold on the mind of the people. A fight to the end is now being fought between Democratic States and the Totalitarian States.

## II. Dictatorship

Dictatorship as a form of Government has assumed great importance in recent years. If England, France and the U. S. A. are ruled by democratic governments, Russia, Italy and Germany are governed by Dictators. There are also other important states which have forms of government closely approaching dictatorship

The term Dictatorship, in the constitution of the Roman Republic, signified the temporary possession by one man of unlimited power, a trusteeship - regarded as necessary to enable the state to weather a crisis. Dictatorship in modern times differs from ancient Roman Dictatorship in two important respects. No Dictator in ancient Rome held power for more than six months ; whereas modern Dictators are exercising power during their whole life. In Rome the office of Dictator was bestowed in solemn, legal fashion, and at the end of the period of office, the Dictator had to give an account of his stewardship. A Dictator in modern times seizes power through a *Coup d'etat* and later on legalizes the new situation by decreeing new constitutional rules, which the people are persuaded or intimidated into ratifying by plebiscite. The Roman Caesars in Imperial Rome exercised personal and military Dictatorship, while Stalin, Hitler and Mussolini assert that they do not rule for their own pleasure but for the good of the people.

Dictatorship finds suitable soil for its growth in a country where the people have not been trained in the art of democratic government. In such a country when either economic depression

or political or social chaos exists and the existing government cannot restore tolerable conditions, Dictatorship does arise. The War of 1914-18 had imposed military discipline, and the concentration of authority as required for military purposes accustomed men to expect public problems to be solved by the decision of an arbitrary authority. When the military discipline was removed after the war, anarchic self-indulgence prevailed in the countries which had no long-standing democratic tradition. Moreover, problems of unprecedented difficulty with regard to maintenance of law and order, distribution of land, redistribution of burden of taxation, currency inflation, disorganisation of industry and consequent unemployment on a large scale demanded quick solution. Under such circumstances the people would welcome a strong man who brings order and settles matter not by counting majorities but by his own fiat.

Causes of  
the rise of  
Dictatorship

The modern Dictator retains all power in his own hands indeed, but he never omits to win popular support. Each Dictator has the party behind him. The basis of the party is gradually widened indeed, but it is not the party which devises policy. Article 4 of the Statute of the Fascist party, promulgated on the 28th April, 1938, defines the duty of the Fascist as being 'to believe, to obey and to fight.' In Germany, the Nazi party has become "a corporate body of public law" since December, 1933. The party is entrusted with the task of "generating always anew the ideological energies of the Third Reich from the substance of the National Socialist idea, of instilling them into the national community with the aid of propaganda and education, and of infusing them into the governmental body through a comprehensive system of offices interlocking party and state." The party is absolutely servile to the Leader, Herr Hitler, who alone "knows the right direction." Hitler's dictum is . "Authority from above as the result of leadership conscious of its responsibility, confidence and discipline from below"

Popular  
support  
through  
party

In Russia the Communist Party has been recognised as the decisive factor in the Constitution of 1936. Article 141 of the Constitution declares . "The right to nominate candidates is allowed only to social organizations and workers' association, that is Communist Party organizations, trade unions, co-operatives, organizations for the youth, cultural societies." The Communist Party is under the control of Stalin, who is known as "the Leader of the World Proletariat." The Communist Party again controls Soviet Parliament and the Parliament as well as the Executive are under the thumb of Stalin. This is illustrated by the speech of Molotov in the Soviet Parliament on January 19, 1938, when he said . "In all important questions, we, the Council of the People's Commissars, shall

Dictatorship  
of Stalin

ask advice and instructions from the Central Committee of the Bolshevik Party and, in the first instance, from Comrade Stalin." It is to be noticed that Stalin is not a member of the Council of the People's Commissars of the U. S. S. R., which is the Cabinet of Soviet Russia.

Parliament has been reduced to impotence in every country under a Dictatorship. Parliament with two Chambers—the Council of the Union and the Council of Nationalities—has been set up in Soviet Russia under the constitution of 1936. But the role of the Soviet Parliament can be judged by the facts that there was no contest in the election of candidates to the Parliament and that when it met for the first time on January 12, 1938, all votes, without exceptions, were unanimous and without even a single abstention. Moreover, the Praesidium of the Supreme Council, the highest administrative organ is entrusted with the function of interpreting and modifying the laws passed by the Parliament. In Germany, the Parliament or the Reichstag enjoys only advisory functions. Similarly in Italy, Parliament is called upon at need simply to ratify legislation already approved by the effective governing institutions.

In Parliamentary countries the freedom of speech and of organization and peaceful agitation have been regarded as essential within certain limits to the conduct of public business. But in the Dictatorial system, organization of a rival party and agitation against government measures are not allowed at all. Those who accept the underlying policy and principles of the dominant regime can of course speak freely, but they must do so within the framework of the party organization and must be prepared to accept without further question any decision reached collectively by the party. The use of a large number of spies to detect any attempt at opposition to its policy is another characteristic of Dictatorship.

The system of representation in the Dictatorial states is different from that prevailing in the Democratic states. Both in Italy and in Germany individual as such is not represented because the aim of Nazism and Fascism is not to give the individual citizens the power to make their influence felt in the determination of public policy. In both the systems there is an attempt to organize all the various functional groups within Society in subordination to the political State as the organ endowed with the overriding function of co-ordination and control.

The most important characteristic of the dictatorial state is its totalitarian conception. In Russia as well as in Italy and Germany it is held that the state is not only sovereign in a legal sense but has also the function of regulating every department of social

life—education, religion and art as well as capital and labour and the whole national economy. In democratic states there is a clear line of demarcation between ‘things that are Caesar’s’ and ‘things that are not Caesar’s.’

### III. Dictatorial Tendency in India

India is not a full-fledged sovereign state. It is not possible, therefore, for any one to seize and exercise dictatorial authority in the sense in which Stalin, Hitler and Mussolini are exercising it. But there are some tendencies to Dictatorship in the Political life of India. If these tendencies are not controlled and counteracted in time it is likely to establish its regime when India attains perfect autonomy.

India is suffering from acute economic distress. The masses are illiterate and disorganised. Under such circumstances it is quite natural for us to look up to one single individual, who by the magnetism of his personality has been able to secure a large following, for setting right all our economic and political problems. The Congress, which has championed the cause of Indian independence claims to be the only political organization of the people. Under its banner industrialists and peasants, millowners and socialists, illiterates and intellectuals, communists and conservatives sink their individual political and economic differences in the interests of the broader cause of constitutional freedom. Such an organisation may develop into the one single party in the state just like the Communist party in Russia, Nazi party in Germany and the Fascist party in Italy. S. C. Rajagopalachariar, Premier of Madras, in his Y. M. C. A. Annual Dinner speech at Madras in 1939 observed that “There is no Party which we consider as our Opposition which is likely to be capable of and willing to take up the Government from the Congress..... The Congress was not started to take over party government. It was formed, it was nurtured, it has been constituted to take over the Government from a foreign power, not the Government from any other party in the country” It is not unlikely that when India gets self-government and when the Congress is able to bring the Muslims within its fold no second party will be tolerated.

In the Congress itself Mahatma Gandhi holds a position not unlike that of Stalin in the Communist party. Stalin is not a member of the Russian Cabinet, yet he is consulted first about every question of any importance. Similarly, Mahatma Gandhi is not a member of the Congress Working Committee, yet his decision is final in all matters relating to the Congress. The Tripuri session of the Congress (1939) has voted him to the position of the Dictator by passing the following resolution .

"In view of the critical situation that may develop during the coming year and in view of the fact that Mahatma Gandhi *alone* can lead the Congress and the country to victory during such crisis, the Committee regards it as imperative that the Congress Executive should command his *implicit confidence* and requests the President to nominate the Working Committee in accordance with the wishes of Gandhiji."

But it would be wrong to say that there is any definite Fascism or Dictatorship at present in India. Fascism has been defined as the Dictatorship of finance-capital supported by petty bourgeoisie and such workers as can be successfully deceived. In India the larger banks and the largest capitalistic concerns are in the hands of foreigners. These foreign concerns can not be discriminated against even by the Central Government under the Constitution of 1935. The Congress has no control or influence over them. For carrying on the national struggle Mahatma Gandhi has been vested with almost dictatorial power so far as merely the Congress policy is concerned. The Congress has recently punished some Leftists by not allowing them to hold any elective post for two or three years indeed ; but this does not amount to Dictatorship in the sense in which it is used in Russia, Italy and Germany. Acharya J. B. Kripalini has rightly pointed out that "Here is a dictatorship that dictates, rules and crushes without police, without an army, without machine guns, guillotines, gallows, jails, concentration camps, volcanic islands, third degree methods or even a bottle of castor oil."

#### IV. The Totalitarian State

It has already been shown Dictatorship is an expression of a new conception of the state which is known as the Totalitarian State. Though there are many points of difference between Communism on the one hand and Fascism and Nazism on the other, yet they all alike pin their faith on the Totalitarian State. The totalitarian view of the state is that the state is absolute and omni-competent. Every phase of man's life including art, culture, morality and economic activity is within the jurisdiction and under the control of the state.

The fullest expression of the totalitarian conception of the State is found in Mussolini's book "Fascism", in which he says :

Views of  
Mussolini  
on State

"Anti-individualistic, the Fascist conception of life stresses the importance of the State and accepts the individual only in so far as his interests coincide with those of the State, which stands for the conscience and the universal will of man as a historic entity. It is opposed to classical liberalism which arose as a reaction to absolutism and

exhausted its historical function when the State became the expression of the conscience and will of the people. Liberalism denied the State in the name of the individual, Fascism reasserts the rights of the State as expressing the real essence of the individual. And if liberty is to be the attribute of living men and not of abstract dummies invented by individualistic liberalism, then Fascism stands for liberty, and for the only liberty worth having, the liberty of the State and of the individual within the State. The Fascist conception of the State is all-embracing, outside of it no human or spiritual values can exist, much less have value. Thus understood, Fascism is totalitarian, and the Fascist State—a synthesis and a unit inclusive of all values—interprets, develops, and potentiates the whole life of a people ”

Totalitarianism thus claims that individuals are not end in themselves, the State alone is an end in itself. It is in and through the State that individuals can find the fulness of their life and true freedom. Individuals like cells in an organism are merely free to discharge the function assigned to them by the State. The natural corollary from such a conception is that there can be no civil liberties like the right of free speech, free press and free and fair trial in a Totalitarian State. Every aspect of life and activity of the individual as well as of social, economic, cultural and even of religious groups is regulated by and in the interest of a mystical entity called the State

Implications  
of Totalita-  
rianism

In Germany the Nazi State is equally totalitarian with slight ideological difference. Mussolini extols the state, but Hitler has denounced the Hegelian deification of the state and declared at the National Socialist Party Congress in 1934, “We command the State”. The

The Nazi  
State

last resort of authority is not the state but the party and its Leader. Such a claim, however, does not bear any philosophical scrutiny. In any case it is the Nazi Party or the State which seeks to control every aspect of life of the German people. The Propaganda Ministry under Dr. Goebbels exercises strict control over the National Chamber of Culture, which is the exclusive legitimate representation of all those Professional associations whose members are engaged in literary production, newspaper, work, broadcasting, the motion-picture industry, theatrical and musical performances, or the plastic arts, whether as employers, employees or independent artists. The Propaganda Ministry also controls the German Academy of Politics, the Council for Commercial Advertising, the National Travel Committee, and the National Broadcasting Company.

If Mussolini deifies the State and Hitler subordinates it to the party, Karl Marx, who has largely shaped the ideology of the



Soviet State, held that the State would die or wither away fairly rapidly after the assumption of political power by the Proletariat. Lenin, however, held that the death of the state will not be so rapid. According to him the total decay of the State will only take place after the complete realization of Communism, when everyone will receive what he requires according to his needs. But Stalin admits that in Russia only Socialism has been established and not Communism. "In Socialist society," observes Stalin, "while each person is obliged to work, remuneration is not fixed according to the needs of each, but according to the quantity and quality of the work furnished; therefore the salary—unequal, differential—continues to be applied there. Only when we have succeeded in creating an order permitting men to receive from society, in exchange for their labour, not according to the quantity and quality of the work done, but according to their needs, will it be possible to say that we have established a Communist society." Stalin has further explained that the transition from the initial, primary phase of Communism to the higher, complete phase constitutes an entire historical epoch. The Power State based on force cannot be dispensed with in Russia so long as the other countries in the world do not attain the complete phase of Communism. If the "Power State" is allowed to wither away in Russia, the neighbouring states will destroy the socialism of Russia. Thus Stalin has introduced substantial changes in the Marxist conception of the function of the State.

The Soviet Government in Russia controls art and literature so that these may be yoked to industrialism. There is no freedom of the press, no freedom of teaching. Every attempt is made to produce a dead uniformity of opinion. No deviation from the orthodox opinion is tolerated. The mass scale of trials and executions in Russia in the summer of 1937 may be compared to the Blood Purge in Germany of the summer of 1934. The record of the Soviet State for twenty-two years, of Fascism for seventeen years and of Nazism for seven years shows that terror is the normal concomitant of the totalitarian state system. "Terror in the totalitarian states," observes Calvin B. Hoover, "attains Frankenstein proportions not simply because the state is authoritarian, but because it insists on its totality as well. Since the State claims for its jurisdiction every phase of human life, a greater number of people are subject to terror, come into contact with it more frequently and feel its pressure more intensely than would be true under a purely personal political dictatorship. Terror is the only instrument sufficiently powerful to enable the attainment of the goal of totality."

Communist  
views on  
State

Dead uniformity of  
opinion in  
Russia

Terror as an  
instrument  
of the  
Totalitarian  
State

The economic life is controlled by the State to a greater extent in Russia than in Germany and Italy. Private property has been abolished and all the means and instruments of production have been socialised. The state through its different organisations works out statistically what exactly the whole community may reasonably need and desire and communicate to each factory, or mine or any other centre of production, what share it has to bear in the total production. Leon Trotsky, one of the makers of the Bolshevik Revolution, wrote in his book "The Revolution Betrayed (1937)" that "with piecework payment, hard conditions of material existence, lack of free movement, it is hard indeed for the worker to feel himself a free workman. In the bureaucracy he sees the manager in the State the employer."

Planning  
under  
Totalitarian  
State

In Italy and Germany private property has not been abolished, but it has been sharply limited. In Italy a cultivator has to produce crops which Italy's need for self-sufficiency dictates. All important financial institutions are controlled by the state and the government fixes the rate of interest on individuals' savings and utilises the capital in the way it thinks best. Moreover, Mussolini has announced that he intends to nationalize large-scale industry. Similarly, in Germany before the out-break of the war the capital savings of the people were used for rearmament and other work-creating projects. The profits of industry were levied upon to pay for export subsidies.

Private  
property in  
Italy and  
Germany

All the three states, Italy, Germany, and Russia have used the economic resources of the country to attain the goal of industrialization, self-sufficiency and armed security. Militarism does not find any place in the orthodox theory of Communism but in the U. S. S. R. there are seventy-four Aeroplane factories producing annually around eight thousand planes. Glorification of war is Common to Fascism and Nazism "Fascism", according to Mussolini, "discards pacifism as a cloak for cowardly supine renunciation in contradistinction to self-sacrifice. War alone keys up all human energies to their maximum tension and sets the seal of nobility on those peoples who have the courage to face it." In Germany the school students have been militarised through their text-books. In a German Text-book written by Dr. A. Vogeler the following passage occurs: "Advantages of war 1 For the State. (1) war is an antidote against the rotten herbs of peace, where rationalism sends everything to sleep by overcoming idealism; (2) when patriotism is awakened the holy fire of the enthusiasm for the Fatherland is set alight; (3) the victors acquire a predominant position of

Militarism

Glorifica-  
tion of  
war

force, of prestige and of influence which is their reward; the vanquished are not dishonoured, if they have defended themselves bravely; (4) peoples learn to know one another and to respect each other, the exchange of ideas and viewpoints is facilitated." Such teachings indicate the relapse of human civilization to barbarism.

## V. Syndicalism

Syndicalism aims at putting an end to Capitalism as well as to the State and organising a society in which each industry will be collectively managed by the workers. It views the trade union as the primary means of achieving the revolution through the general strike. The trade unions should first of all intensify class consciousness in workers by participating in the struggle for higher wages, shorter hours and better working conditions. They will use the strike, sabotage (injuring machines in the factory) the label (asking consumers not to buy articles produced by companies mentioned by the trade union organisation) and the boycott as weapons in a spirit of militancy against the system of private property and against the state. The workers will thus be trained for the supreme act of the class struggle, the general strike, which will sound the death knell of the present industrial system and inaugurate the new social order.

In the new social order there will be no necessity for the existence of the state. The *syndicats* or trade unions, functioning harmoniously and without external compulsion, will form a general national federation. This federation will not represent the geographical units but the functional interests of the workers. It will carry on the statistical and administrative services which are necessary for the smooth operation of the system as a whole. Thus "Syndicalism pictures the future society as a free and flexible federation of autonomous productive and distributive associations based on collective ownership and carrying on their functions in accordance with the needs of the community."

The Syndicalists accept the Marxian premise that in modern society the wage-earners are exploited by the owners of property and that it must be ended by a revolution, which will lead to the establishment of a collectivist society. But they differ from the Bolsheviks in this that they do not want to substitute a new proletarian state in the place of the hated parliamentary state. Their aim is to eradicate centralised government altogether. Syndicalism shares with Anarchism the ideal of abolishing all governments beyond the co-operative control of economic life.

Technique  
of  
revolution

Vision of  
future  
state-less  
society

Difference  
with  
Bolshevism

The Syndicalists never cared to formulate their theory lucidly regarding the character of the society without the state. It is not clear as to how the interests of consumers will be looked after and how the peace and harmony between different categories of workers can be maintained without political authority. "The mines for the miners, the railways for the railwaymen, and the dust carts for the dust men"—such is the common criticism of the implications of Syndicalist doctrine. The Syndicalists aver that the Proletariat need not bother too much about the consequences of its own actions or the form of government which will eventually result from them.

Criticism  
of the  
theory

The Syndicalist theory became very popular in France, Italy and Spain in the early years of the twentieth century. But the changes in social life in the post-war era, the growth of tendency towards reformism in France and the ruthless suppression of the Syndicalists in Italy, Germany and Spain has brought about a decline in the Syndicalist movement. In every country to-day there is a growing tendency towards nationalism, increased state action and emphasis on immediate economic security. All the tendencies militate against the principal tenets of Syndicalism. It is being crushed at present between the upper and nether millstones of Fascism and Communism.

Causes of  
decline in  
Syndicalism

## VI. Guild Socialism

Guild Socialism stands for workers' control and self-government in industry. It is opposed to Collectivism in as much as it does not want that the industries should be conducted, when they have been socialised, under a bureaucratic system based on appointment from above. It is equally opposed to Syndicalism because it does not dispense with the state and because it puts in the forefront of its programme the idea of the service of the consumer. Guild Socialists want to abolish the passive capitalist class by denying all rights to rent and interest.

Aim of  
Guild  
Socialism

The foundation of the Guild Socialist Movement was laid in 1914 when Mr. S. G. Hobson and Mr. A. R. Orage formulated the theory in their work, entitled "National Guilds". According to them each industry was to be reorganised as a self-governing public service corporation established under a charter from the State. The State would keep out of the industrial field save as a final co-ordinating and chartering authority. The workers in each industry were to choose their leaders and were to be collectively responsible for the

Different  
schools of  
Guild  
Socialism

successful operation of the enterprises in which they were engaged. The state would have certain control over distribution and a certain share in management. According to another school of Guild Socialists the state would simply look to the interests of the consumers and for this purpose would negotiate with the Guild Congress as an equal. The Guild Congress would be a federation of different Guilds. It would take over the co-ordination of the various industries and services and thus complete the structure of industrial self-government.

The Guild Socialist plans have exercised a powerful influence on the thought of the Trade Union and Socialist movement in Great Britain. These plans were not accepted as a whole indeed, but many elements derived from Guild Socialism passed over into the approved plans of Trade Unions. Thus the Coal Miners' Federation proposed that the coal industry should be nationalized and handed over to a governing body of which half the members were to be appointed by the Miners' Federation, and the other half by the state to represent only the technical and administrative sides of the industry itself. In 1920 the building operatives of Manchester and London took the lead in forming Guild Committees to undertake contracts with the local authorities for the building of working-class houses. The local Guild Committees were elected by the building trade unions in each small area. Over them were Regional Councils, elected partly by the craft organizations of architects, engineers, clerks, etc. and partly by the local Guild Committees. The Regional Councils were federated into the National Building Guild. The National Building Guild was responsible for finance, insurance and supply of materials; the Regional Councils made contracts and the local committees supplied labour on building contracts undertaken in their respective areas. Foremen were also appointed by the local committees; they were not elected by the particular workmen to whom they gave orders. Though the organisation was a democratic one, yet when the trade depression came the scheme failed miserably, mainly because of serious faults of internal administration. The Guild Socialists may not have found precisely the right forms for the exercise of control, but in one form or another a Socialist Society will have to satisfy the demand for self-government in industry.

The Guild Socialists tend to belittle the sphere of the state by restricting its intervention in the economic sphere, yet it is the state which has to see that nobody takes rent or interest. They also advocate the representation of functional groups such as those of manufacturers,

Guardian-  
ship of the  
interests of  
consumers

Experiment  
of Guild  
idea in the  
Building  
trade

Functional  
representa-  
tion

steel-workers, artists, teachers, Catholics, etc But by such a representation the general interests of the people and their common welfare may suffer In the scheme of territorial representation, as it prevails at present, the 'pluses and minuses' of particularist and opposing aims cancel out one another. "The extreme insistence of the Guild Socialists," observes MacIver, "on functional representation becomes an attack upon the state itself."

Both the Guild Socialists and the Fascists preach the doctrine of functional organisation. But there is fundamental difference between the two. The Guild Socialist scheme is based on democratic equality among the members of the various services, whereas the Fascists give equal representation to the large number of employees with that of a *small number* of employers in the co-ordinating Corporation. The Fascists retain the distinction between the workers and employers, while the Guild doctrine proposes to treat the entire personnel of industry as a corporate group possessing collective rights of self-government. Moreover, the Fascists treat the functional bodies not as independent institutions, but as subject to the over-riding power of the State. The supreme power over industry does not rest with the functional bodies, but with the Fascist Grand Council. In the Fascist order the functional bodies are subordinate in every respect to the Totalitarian State, while the Guild Socialists throw over the notion of the sovereign State altogether

Difference  
between  
Guild  
Socialism  
and Fascism

## VII. Marxist Criticism of Capitalism

Capitalism has grown out of Individualism. It is the economic expression of the traditional democratic form of Government. In the opinion of Karl Marx the capitalist system of productive organisation is based essentially on the incentive of private profit or surplus value. Capitalism was indeed a necessary stage in the industrial development, because it was only under the control of the autocratic individual *entrepreneur* that the new technical forces could find free play. It needed a strong directive energy to concentrate the workers in factories, and to accumulate capital at the expense of the immediate standard of living. Co-operation of labour and the use of costly machines produced higher productivity. The capitalists exacted long hours of work from the labourers and paid small wages. The workers gradually organised themselves and protested against the attempt to transform them into beasts of toil. The capitalists were compelled by the state to reduce the hours of labour. They, therefore, concentrated upon a more intense productive system by increased use of machinery and other labour-saving devices with a view to reduce the cost of production. This

Capitalism a  
necessary  
historical  
stage

step gives rise to the permanent reservoir of unemployed which characterises the industrial system. The greater use of machinery leading to standardization and Scientific Management makes it impossible for the small capitalists to compete with large-scale business. The small employer has not indeed disappeared, but he has become increasingly an agent, sub-contractor, or hanger-on of large-scale business. The growth of joint-stock organisation has increased immensely the number of small part-proprietors of capitalist business, but the shareholders have very little control over the business. The control of capital and consequently of business is concentrated in the hands of a few persons. There is an increasing tendency to monopolistic combination in all industries which require a large outlay upon fixed capital. Capitalism damages the instruments of production by its wasteful use of natural resources. It adulterates the commodities it produces. According to Marx the effect of such a system on the working class is disastrous. Their personality is injured by the authoritarian control it exercises over them. Their morality is lowered because they are forced to produce adulterated goods and thereby cheat the public. Marx has drawn up a vivid, although somewhat fanciful picture of the consequences of capitalism in the following words :

**Concentration of control in the hands of the few** "All methods for raising the social productiveness of labour are effected at the cost of the individual labourer ; all means for the development of production transform themselves into means of dominating and exploiting the producer (labourer). They mutilate him into a fragment of a man ; they degrade him to the level of an appendage to a machine. Every remnant of charm in his work is destroyed, and transmuted into a loathsome toil ; he is separated from the intellectual possibilities of the labour process in the same degree that science, as an independent agency, becomes a part of it. They distort the conditions under which he works, and subject him, as he labours, to a despotism made the more hateful by its meanness. They transform his life-time into working-time, and his wife and child are dragged beneath the wheels of the Juggernaut of Capital. But all methods for the production of the surplus value are, at the same time, methods of accumulation, and every extension of accumulation becomes again a means for the development of those methods. It follows, therefore, that as Capital accumulates, the lot of the labourer, whether his wage be high or low, must grow proportionately worse. Accumulation of wealth at one pole is, therefore, at the same time accumulation of misery, agonised toil, slavery, ignorance, brutality, mental degradation, at the opposite pole." We have quoted this long passage to show the reason why Marxism makes such a strong appeal to the western workers.

**Effects on Labour**

Marx believed that Capitalism is built upon inherent contradictions and contains within itself the seeds of inevitable decay. As the labour-saving devices are used in an ever-increasing degree, the labour-power required declines gradually. The expensive plans can be operated at a profit, over and above the interest-charges involved in their construction, only if they are able to work full time, and to find buyers constantly for their full output. Buyers can not be found at home for the increased products because of the decreased purchasing-power of the masses resultant upon the existence of a large number of unemployed persons. The result of this is over-production and under-consumption. This is the root cause of the ever-recurrent crises, which throw thousands of workers out of employment and give rise to strikes and lock-outs. "Capital is then wasted," points out Laski, "production is restricted by monopoly and combination, the productive capacity of society ceases to be used for the common advantage."

Inherent  
contradictions in  
Capitalism

Lenin in his "Imperialism" has tried to prove that Capitalism leads to Imperialism, and Imperialism to international war, in which Capitalism itself is destroyed on account of its incompatibility with social good. The capitalists seek wider and wider market in order to buy raw materials and sell finished goods. The less developed countries gradually find that they can not offer more raw materials until their own productive resources have been more fully developed. The capitalists of developed countries then lend capital and credit to the backward countries. The burden of debts of the latter grow so heavy that further loans can not be granted to them by the former. Then again as more and more countries pass under industrialism, there arises intense rivalry among them in selling goods and lending capital to the less developed areas. They fight for openings and concessions among themselves. Meanwhile the labourers combine among themselves to resist their masters. They come to realise that their labour-power can not earn its just reward unless the means of production are owned in common. Marx observes that at this stage comes "the revolt of the working-class, a class always increasing in numbers, and disciplined, united, organised, by the very mechanism of the process of capitalist production itself. The monopoly of capital becomes a fetter on the mode of production which has arisen and flourished with and under it. Centralisation of the means of production and socialisation of labour at last reach a point where they become incompatible with their capitalist integument. This integument is burst asunder. The death knell of capitalist private property sounds. The expropriators are expropriated." Such a state of things prepares the stage for the establishment of the Communist society.

Capitalism  
breeds war

Revolt of  
workers



## VIII. Communism

Communism seeks to establish a society in which classes have been abolished as a result of common ownership of the means of production and distribution. It believes that this programme can be worked out only by means of a social revolution in which the dictatorship of the proletariat is the effective instrument of change. Karl Marx in his Manifesto declares "The theory of the Communists may be summed up in the single sentence Abolition of private property." By the abolition of private property he does not mean that the right of the worker to the produce of his own toil will be suppressed, he means, on the other hand, that the right of others to appropriate for themselves the produce of labourer will disappear.

Communism seeks to destroy Capitalism, but not Capital itself. The Communist Society sets aside a certain proportion of its current productive resources for the making of new capital goods, leaving the remainder to be applied to goods of consumption. Communism sets before it the aim of securing to each according to his or her needs. It implies a complete rejection of mechanism of price and exchange. "Its emotional and ethical essence," writes Mr. Keynes, "centres about the individual's and the community's attitude to money. ....It tries to construct a frame-work of society in which pecuniary motives as influencing action shall have a changed relative importance, in which social approbations shall be differently distributed, and where behaviour which previously was normal and respectable, ceases to be either the one or the other."

The Communists believe that the state arose as an instrument of class oppression, and that when by means of the dictatorship of the proletariat classes disappear, the state will disappear also, since its *raison d'être* will have gone. Engels explains the process in the following words:—"The first act of the state in which it really acts as the representative of the whole society, namely the control of the means of production on behalf of society, is also its last independent act as a state. The interference of the authority of the state with social relations will then become superfluous in one field after another, and will finally cease of itself. The authority of the government over persons will be replaced by the administration of thing, and the direction of the processes of production. The state will not be 'abolished'; it will wither away." But it has already been pointed out that in Soviet Russia the state is not showing any symptom of withering away. No social theory, which seeks to dispense

with the state, has as yet met with any success anywhere in the world.

Soviet Russia set up before itself the task of giving a concrete shape to the doctrines of Marx and Engels. Let us examine how far the Soviet Government has succeeded in achieving this end. Land and Capital, the means of production, have been nationalised and this has been accompanied by the liquidation of all classes of capitalists, whether financiers or traders, manufacturers or ship-owners, speculators in land-values or investors on the stock-exchange. But "Nationalisation has not meant" in the words of Sidney and Beatrice Webb, "compulsion to take service under the government as the only employer. It has not prevented millions of individuals from working independently or in voluntary partnerships and selling the products of their labour in the open market for their own or their family's subsistence. It has not meant the abolition of all personal property or any compulsion to have all things in common. It has not prevented inequality of income or possession; nor even the payment of interest on Government loans and on deposits in the Postal Savings Banks."

How far  
Communism  
has been  
realised in  
Soviet  
Russia

The successive Five Year Plans have, indeed, stamped out unemployment by providing work to every citizen according to his or her capacity; but the citizens have been forced to work as slaves to increase the productive capacity of the community. The increased production has been applied to the production of arms, armaments and airships and not to the raising up of standard of life of citizens. Marx thought that a Communist society will be the apostle of universalism and international peace. But the spirit of nationalism is daily increasing in Russia and she now possesses an army which is not inferior to that of any other nation. The fourth partition of Poland in September 1939 shows that Soviet Russia has not been able to give up the Czarist tradition of Imperialism.

Nationalism  
and Mili-  
tarism in  
Soviet  
Russia

In India the example of Russia and the philosophy of Karl Marx are exercising considerable influence on the young students who are fired with a burning zeal for putting an end to the misery of starving millions. But Dr. S. N. Das Gupta, a world-renowned philosopher, points out. "One who is acquainted with the economic condition of India and the religious and moral dispositions of Indian people—Hindu, Moslem or Christian—could not think for a moment that Marxism would have any chance of success here. The way to secure the amelioration of the depressed people is not by infusing class-hatred but by stimulating more sympathy in the upper classes and appealing to their sense of the religious and moral values. This has been the eternal method that India had adopted

Communism  
has little  
chance of  
success in  
India

in the past by which the great men of India have been able to secure the equilibrium of the classes. No politician, no economist and no philosopher can afford to be blind in his zeal for his reformatory movements to the traditional psychology, the cultural tendencies and the economic conditions of his country. It is false to argue that because certain measures and certain historical interpretations have been partially true of any particular country, it would also be so with every other country."

## CHAPTER XXIII

### THE ENGLISH CONSTITUTION

#### I. Nature of the English Constitution

The Constitution of a state consists of those fundamental rules and principles which determine the distribution and regulate the exercise of governmental power as well as the relations of the governing authorities with the people. The Constitution may be made in a special constitution-framing body or may grow by the process of evolution. Most of the Constitutions of the modern states have been made deliberately at a particular time, while the English Constitution has grown from generation to generation and almost from year to year. There is an unbroken continuity of development in the English Constitution for more than a thousand years. There has been no sudden break in it. Institutions of one age have been modelled on those of the preceding one. A French writer has remarked that the English have wisely "left the different parts of their Constitution where the waves of history have deposited them," without ever attempting "to bring them together, to classify or complete them, or to make of it a consistent or coherent whole."

Continuity  
of the  
English  
Constitu-  
tion

Looking at the continuity of development of the English Constitution one can easily understand that such a Constitution would be largely an unwritten one. The Constitution which is made in a constitutional Convention is written in one or more documents. The American and the French Constitution are pointed out as examples of written constitution. The English people have no such written document. The absence of such a comprehensive document led Thomas Paine to declare that "no such thing as a Constitution exists or ever did exist." Similarly Tocqueville observed that "England has no Constitution." But a Constitution need not necessarily be written in one or a few documents. The essence of a Constitution lies not in a formal document but in the observance of fundamental rules relating to the government of the country. Such rules, according to Bryce, do exist in England in the form of "a mass of precedents carried in men's minds or recorded in writing, of dicta of lawyers or statesmen, of customs, usages, understandings, and beliefs bearing upon the methods of government, together with a certain number of statutes,..... nearly all of them presupposing and mixed up with precedents and customs, and all of them covered with a parasitic growth of legal decisions and political habits, apart from which

An unwritten  
Constitu-  
tion

the statutes would be almost unworkable, or at any rate quite different in their working from what they really are."

Though the English Constitution is an unwritten one, yet the proportion of written laws of the Constitution is steadily increasing

**Written elements in the Constitution** Many parts of the Constitution are to be found in Charters and Statutes. The Great Charter of 1215, the Petition of Right of 1628, the Bill of Rights of 1689, and the Act of Settlement of 1701 are important documents which have curtailed the power of the King. Personal liberty of the subject is guaranteed by the Habeas Corpus Act; the qualification of voters is decided by the Parliamentary Acts of 1918 and 1928, and the Local Government in England is carried on according to the Statutes of 1835, 1888 and 1894. These and other Statutes, however, form only a small part of the English Constitution. The exact political function of the King, the relation between the House of Commons and the Cabinet, the position and function of the Cabinet, and the relation between the ministers and the Civil Service are not to be found in any Statute.

This brings us to the third characteristic of the Constitution, which is called its unreality. The actual working of the Constitution does not correspond to the wording of the legal statutes or to the legal theory. A student studying diligently the statutes and regulations can not get a correct view of the English Constitution. In the Acts of Parliament there is no reference to the Cabinet, to the unique position of the Prime Minister, to the party organisation or to the influence of the electorate on Parliament. The constitutional structure of England, bearing the imprint of many hands, has been compared by Sir William Anson with a rambling structure, to which successive owners have added wings and gables, porches and pillars without any system or symmetry. It abounds in anomalies, which the English people love to retain. It is the gap between constitutional theory and governmental practice which has been called the unique feature of the British Constitution.

**Its unique feature is its unreality**

The English Constitution is not rigid but unfixed and flexible. Changes can be introduced in it by the ordinary process of legislation. Sometimes the change is effected simply by the modification of usage. There is no distinction between constitutional law and ordinary law. The Judiciary can not call into question the right of Parliament to make any law it likes. The English Constitution is flexible not only because it can be changed by the ordinary procedure of law-making, but also because it is broad enough to permit considerable changes in governmental methods without any alteration in the words.

**Flexibility**

## II. Elements of the English Constitution

The English Constitution can not be found in any single document or series of documents. It has to be diligently searched in certain historic documents, statutes, judicial decisions, Common Law and usages or conventions. The historical documents embody certain solemn agreements or engagements, entered into at times of political crisis. Those documents define and regulate the power of the Crown, guarantee the rights of citizens, and determine the relation between the Executive and the Judiciary. Such documents are the Magna Carta, the Petition of Right, the Bill of Rights, the Act of Settlement, the Habeas Corpus Act, the Parliament Act of 1911, and the Statute of Westminster 1931.

Charters and  
constitutional  
landmarks

In point of procedure there is very little difference between some of these historic documents and the statutes, but the importance of the former is so great that they are treated as a separate category. Some of the statutes also determine the constitution of the country. Thus the Secret Ballot Act of 1872 prescribing the use of secret ballot in voting, the Representation of the People Act of 1918 and the Equal Franchise Act of 1928 regulating the suffrage are mere statutes of British Parliament. New Governmental machinery is also created by Statutes. As for example, the Municipal Corporations Act of 1835 and the Local Government Acts of 1888, 1894 and 1929 determine the composition and functions of local bodies; the Judicature Acts of 1873-76 fix up the structure of the Judiciary in England.

Statutes

The third element of the English Constitution is to be found in the judicial decisions which explain the scope and limitations of the various provisions of statutes. Some of the most valuable constitutional rights are derived from judicial decisions. Thus the independence of juries has been established by the decision of judges in *Bushell's Case* (1670) and the immunity of judges in *Howell's Case* (1678).

Judicial  
decisions

The Common Law of England forms a part of the English Constitution. The prerogative of the Crown, the right of trial by jury in criminal cases, the right of freedom of speech and of assembly, the right to redress of grievances against government officers, rest on Common Law. The Common Law is a body of judge-made rules, which, for most part, has never been ordained by a King or enacted by Parliament.

Common  
Law

Lastly, the political usages or conventions play a very prominent part in the workings of the British Constitution. The Charters, Statutes, Judicial decisions and many essential parts

of the Common Law have been written down, though not all in formal documents, but the conventions are not usually reduced to formal writings. The importance of conventions can be judged from the fact that even competent observers like Bryce and Baldwin admit that the description of the British Constitution at any particular time must necessarily be defective. According to Bryce the British Constitution "works by a body of understandings which no writer can formulate." Baldwin has said: "The historian can tell you probably perfectly clearly what the constitutional practice was at any given period in the past, but it would be very difficult for a living writer to tell you at any given period in his lifetime what the Constitution of the country is in all respects and for this reason, that almost at any given moment.... there may be one practice called "constitutional" which is falling into desuetude and there may be another practice which is creeping into use but is not yet constitutional."

### III. Conventions of the Constitution

Conventions are those understandings, habits, usages and practices, which though forming parts of the constitution are not law and as such cannot be enforced by a court. Much of the constitutional practices in England, as for example that Parliament is convoked at least once a year, that it is organized in two Chambers, that all measures passed by it must receive the assent of the King before they become law, that the Prime Minister is the leader of the party having a majority in the House of Commons, that a ministry which has lost the confidence of the House of Commons must either resign or appeal to the electorate in a general election, owe their existence to conventions. The organisation and function of the Cabinet depend entirely on convention. It is impossible to make a complete list of conventions of the constitution, because they are constantly changing by a natural process of growth and decay.

Meaning and examples of Conventions

Precedents become conventions when they are generally recognised as creating a rule. Mere practice or mere precedents are not enough for giving rise to conventions. General recognition of a practice may be secured either by reason of a long practice or by means of a definite and formal agreement before the practice begins.

How do Conventions arise?

All conventions are not of equal importance and all are not equally obeyed. There was a convention that the King's speech to Parliament should first of all be approved in Council and it was obeyed for about a century. But it was given up in 1921. The important conventions

Dicey on the sanction behind Conventions

are usually obeyed. Dicey is of opinion that they are obeyed because a violation of these conventions 'will almost immediately bring the offender into conflict with the Courts and the law of the land.' He tries to substantiate his theory by illustrating two cases. The rule that the Parliament must assemble at least once a year is not derived either from Common Law or from any statutory enactment. But it is still obeyed because if a ministry neglects to summon Parliament every year it would be difficult to carry on the administration without raising taxes unlawfully. Again, the Army Act sanctions the existence of a standing army for one year only. If the Parliament is not called every year, it would be impossible to maintain the standing army without violating the law of the land as expressed in the Bill of Rights. The rule that the Ministry ought to retire on a vote to the effect that they no longer possess the confidence of the House of Commons, is followed because a breach of it would make it impossible for them to collect taxes and carry on the government without coming into conflict with Parliament. Dicey comes to the conclusion that "the force which in the last resort compels obedience to constitutional morality is nothing else than the power of the law itself. The breach of a purely conventional rule, of a maxim utterly unknown and indeed opposed to the theory of the law, ultimately entails upon those who break it direct conflict with the undoubted law of the land."

But the explanation of Dicey is not wholly satisfactory for three reasons. First, Dicey himself admits that the violation of some conventions, as for example, the breach of the rule that a bill must be read a given number of times before it is passed, will not bring the government into conflict with the law of the land; yet a bill is habitually read the same number of times. Secondly, a violation of the convention of resigning on a vote of non-confidence will not bring a ministry immediately into conflict with law. When the financial legislation and the Army and Air-Force Acts have passed the House of Commons, by the beginning of July, the Ministry may remain in office without breaking the law at least until the following April. Thirdly, as Lowell suggests, "England is not obliged to continue for ever holding annual sessions of Parliament because a new Mutiny Act must be passed and new appropriations made every twelve months. Parliament, with its plenitude of power, could as well as not pass a permanent army act, grant the existing annual taxes for a term of years, and make all ordinary expenses a standing charge on the Consolidated Fund, out of which much is paid now without annual authorization."

The real sanction behind the conventions is the force of public opinion. Public opinion, again, is based on reason. Usages can be easily disregarded when the reasons for their observance have

Criticism of  
Dicey's  
theory



clearly disappeared. Conventions are, as it were, the rules of the game, and are obeyed as a code of honour. The legislators and administrators are careful not to violate these conventions, because they have been entrusted with authority on the understanding that they would maintain them.

Public  
opinion—  
the real  
sanction  
behind  
Conventions

#### IV. The form of Government in Great Britain

It is often stated that the form of government in Great Britain is that of 'limited monarchy.' The meaning of the term 'limited monarchy' is that government is carried on by the King, but his powers are restricted by constitutional laws. Though there is a king with strictly limited powers in Great Britain, yet to characterise the government of that country as limited monarchy is not strictly accurate. Mere existence of the king in a

A Crowned  
Republic

constitution does not mean that it is monarchical, if the supreme authority does not in fact rest with the king. The original prerogatives of the King of England have in the course of centuries been overlaid in practice so that they now remain only in a form of words. Thus nominally Great Britain remains a monarchy, and this nominalism is followed in the wording of the very latest statutes. But if these statutes are interpreted literally we get the most absurd notion of the character of English Government. The following conventions of the English Constitution clearly show that it is not monarchical in any sense of the term —(1) "The king must assent to any bill passed by both Houses of Parliament" (2) "The king can do no wrong, that is to say, no one can plead the orders of the Crown in defence of any wrongful act." (3) "Some persons are legally responsible for every act done by the Crown ;" and (4) "There is no power in the Crown to dispense with the obligation to obey a law."

Some writers have called the English Constitution a "Mixed Constitution" They assert that the government of England is a monarchy, an aristocracy and a democracy. How far it is a monarchy we have discussed above. It is called an aristocracy because of the existence of the House of Lords, a hereditary second chamber. But the House of Lords is not co-ordinate in power with the House of Commons. It has no power to amend, modify or reject a money Bill, and it has very little control over the executive. No minister has ever resigned on account of an adverse vote of the House of Lords.

Meaning of  
'Mixed Con-  
stitution'

The real supremacy belongs to the House of Commons. It is the House of Commons which alone practically controls the executive, which imposes taxes and directs the expenditure of the revenue and which can pass any law it likes, despite the opposition of the House of Lords. The House of Commons is a democratic body, its

The demo-  
cratic basis  
of  
Government

members being elected by adult suffrage. The institutions of monarchy and the House of Lords now exist for providing some kind of checks to democracy. Hence it is more appropriate, to designate the English Constitution as limited democracy than as limited monarchy. It has been aptly described as a "Crowned Republic."

## V. The Executive, Legislature and Judiciary in England

The executive power in England is nominally vested in the Crown. The King is thus the formal executive. But in actual practice the executive power is exercised by the Cabinet. The most important ministers constitute the Cabinet. Every executive department is under the control of a minister, who is the political chief of the department. But a minister is an amateur, with no expert knowledge of the work of his particular department. Moreover, he resigns his office with the resignation of the Prime Minister. He is like a bird of passage, resting over a particular department for a time. The routine work of a department is carried on under the guidance of permanent Under Secretary. The minister lays down the broad principles and supervises the work of his department. He depends entirely on the permanent staff for answers to questions that are put to him in Parliament.

The King,  
ministers  
and the Civil  
Service

The legislative power is vested in the King-in-Parliament. There are two houses or chambers of Parliament; the upper chamber is called the House of Lords, and the lower chamber the House of Commons. Of these the House of Commons is the more powerful body.

The  
Legislature

The judiciary in England is composed of the House of Lords, the expert professional judges, and the amateurish unpaid Justices of Peace. In every branch of government of England there is a close association between amateurs and experts. In the executive branch the amateurish ministers are associated with expert civil service men, in the local government, similarly, the elected councillors work together with the paid professional officers.

Association  
of amateurs  
with experts

In England, the theory of separation of powers is not observed. Parliament is the supreme authority in the state—it controls the executive and to a certain extent the judiciary also. The Lord Chancellor, the highest judicial dignitary in England, is a member of the Cabinet besides being ex-officio chairman of the House of Lords. The Lords of Appeal also are members of the House of Lords. Judges are bound to apply any law, passed by Parliament.

Inter-  
relation  
between the  
three organs  
of govern-  
ment

They can be removed from their office by a petition of both the Houses. The cabinet is the executive body but it initiates all bills and has the power to dissolve the legislature itself.

## VI. The King and the Crown

A fundamental distinction observed in the modern English Constitution is that between the King and the Crown. It has been remarked that "there are many subtle distinctions in the vernacular of British Government but none more vital, as Gladstone once remarked, than the distinction between the King and the Crown." The Crown is an abstract idea implying the government. It has been called by Sir Sidney Law 'a convenient working hypothesis.' The King, on the other hand, is a person with certain well-defined formal and informal powers. The distinction between the King and the Crown is well expressed in the aphorism, "the king is dead, long live the king." It means that a King may die, but the Crown survives. "The Crown never dies. The powers and functions and prerogatives of the Crown are never suspended even for a single moment. They belong to a post, not to a person." The Crown is the fountain of justice; it summons and dissolves Parliament, appoints all civil offices, commands the army and navy, makes treaties, pardons criminals and confers honours. But the King has ceased to be a directing factor in the Government; the prerogatives of the Crown are exercised by ministers who are responsible to Parliament. A courtier of Charles II once scribbled on the door of the royal bed-chamber the following verse:

The Crown  
is an abstract idea

"Here lives a great and mighty King,  
Whose promise none relies on,  
Who never said a foolish thing,  
Nor ever did a wise one."

Charles II replied that it was all very true because his sayings were his own but his acts were the acts of his ministers.

The distinction between the King and the Crown has been effected by a long process of historical development. The Stuart kings were determined to be absolute rulers. But they encountered the equally determined opposition of Parliament which wanted to establish the sovereignty of the Law. The Long Parliament put an end to the autocracy of the king. The Glorious Revolution of 1688 did away with the Stuart theory of Divine Right of Kings. After the Glorious Revolution the legal powers of the King remained undiminished but gradually his executive power was handed over to the Ministry, responsible to Parliament. The development of the party system, which compelled William III and Anne to

Steps by  
which the  
real executive  
power  
have been  
transferred  
to ministers

select ministers from one particular party, made the ministers definitely responsible to Parliament. George I could not speak English and George II did not take any interest in English Politics. Hence the executive power fell to the hands of ministers. The long ascendancy of Walpole consolidated the principle of Cabinet Government. Thus the powers of the Crown came to be exercised by ministers responsible to Parliament. Had the English King remained as despotic as the French kings like Louis XIV, Louis XV and Louis XVI or like Kaiser Wilhelm II or like the Czars of Russia, it would have been overthrown by revolutions. It is by constitutional devices that the King has been divested of much of his power. This explains the remarkable security of the English monarchy in an age when most of the monarchies in the world have been overthrown.

Since the Glorious Revolution powers of the King have steadily declined. But at the same time powers of the Crown have increased. With the increase of governmental activities, departments after departments have been created. Parliament does not find time to deal with the details of works of these departments. Hence large powers are necessarily allowed to the Crown, which makes laws in the form of "Orders in Council." The legislative enactments by the executive have grown to such a dimension that the Lord Chief Justice of England has called attention to this fact by writing a book, entitled "The New Despotism."

*Decline of the power of the King and increase of power of the Crown*

A very important maxim of the English Constitution is that 'the king can do no wrong.' This maxim is significant from three points of view. First, it has helped to remove the King from the arena of party politics and has contributed to the perpetuation of the institution of monarchy. The King can not be held responsible for any act performed in his name. Ultimately, this statement is to be taken quite literally, for if the King were to commit a crime, say if he shoots the Prime Minister, there is no process known to law by which he could be brought to trial. Secondly, it means that no one can plead the orders of the King in defence of any wrongful act. In 1678 Danby was impeached for having written a letter to the English Ambassador in France offering that certain things would be done in return for the payment of a large sum of money. Danby pleaded that he had written the letter by the orders of the King, and even produced the royal pardon for the alleged offence. But those were not accepted as valid grounds for doing so. Parliament definitely laid down that a Minister can not plead the command of the King to justify an illegal or unconstitutional act. Thirdly, the maxim implies that some person is legally responsible for every act

*The King can do no wrong*

done by the Crown. The minister affixing the seal to any act is held responsible for it. In England the government officials are responsible personally for any act done in their official capacity. This is an illustration of the Rule of Law which prevails in England.

## VII. Position and Functions of the King

President Lowell has described the present position of the Monarch in the following words —“According to the earlier theory of the Constitution the ministers were the counsellors of the King. It was for them to advise and for him to decide. Now the parts are almost reversed. The King is consulted, but the ministers decide.”

King  
advises,  
ministers  
decide

This position of the King has been brought about, not by taking away from him his legal authority or prerogative power, but by a gradual change in practice in the actual work of government. In constitutional theory the sovereign is still “not only the chief, but properly the sole Magistrate of the nation, all others acting by commission from and in due subordination to him.” Moreover, he is the head of the church, the army, navy and air forces and of the law; he is also the fountain of justice, mercy and honour. But in actual practice the King does not exercise any of these functions. Lord Esher informed George V that “if the constitutional doctrine of ministerial responsibility means anything at all, the King would have to sign his own death warrant, if it was presented to him for signature by a minister commanding a majority in Parliament. If there is any tampering with this fundamental principle, the end of the monarchy is in sight.”

Formal  
position of  
the King

But it would be wrong to think of the monarch as a mere figurehead. As a matter of fact, he is one of the most hard-working directors of the state and serve some very useful functions. Much however depends upon the personal character of the individual monarch. The King can make an appeal to the country by dissolving Parliament. But in practice he does not dissolve a Parliament without the advice of his ministers. Another formal right of the King is to select the Prime Minister. When there are rival leaders in the party, which has secured the majority in the House of Commons, the King may select any one of the rivals to be Prime Minister. In theory the King can veto any law, passed by both the Houses. But in practice he does not exercise that power.

Theoretical  
powers of  
the King

The informal rights of the King are more important than his formal rights. According to Bagehot the King possesses three informal political rights—“The right to be consulted, the

right to encourage and the right to warn." The monarch is entitled to be informed of the plans of ministers before they are put into operation Lord Palmerston as the Foreign Secretary, congratulated Louis Napoleon on the success of the *Coup d'état* of 1851 without previously consulting the Queen. So the Queen forced him to resign. The Queen also gave encouragement to her ministers at moments of grave crisis. Thus she encouraged Peel to repeal the Corn Laws in 1846. She warned and reproached the ministers whenever she found them to be in the wrong. She rebuked Derby for neglecting to protect the prerogatives of the Crown in 1858. In the same year she rebuked Palmerston for under-rating the gravity of the Indian Mutiny and forced him to send reinforcements to India. The monarch takes keen interest in foreign policy. Queen Victoria and the Prince Consort prevented England from undertaking an unprofitable war with America in the famous Trent affair. At present the King does not take any independent action in foreign affairs. The practice of consulting the King before taking any important step in foreign policy is difficult to follow in a crisis when action has to be taken swiftly. The King was not consulted before the Cabinet sanctioned the Hoare-Laval proposals for the settlement of the conflict between Italy and Ethiopia, nor in March 1938 when the decision to accept negotiations with Italy under an ultimatum was arrived at. In domestic affairs Queen Victoria exercised a salutary influence. She made amicable settlement of controversies between the two Houses in 1867, 1868 and in 1884 and thus saved England from constitutional deadlocks.

Monarch's  
right to  
advise,  
warn and  
encourage

Influence  
of Queen  
Victoria

George V made notable contribution to the English Constitution, first, by supporting Asquith in the great struggle with the House of Lords in 1910, by agreeing to create enough new peers to overcome the resistance of the old aristocracy, if the Lords persisted in their refusal to accept the "People's Budget" of the Commons. Second, he 'sent for' Baldwin instead of Lord Curzon in 1923 to succeed Bonar Law as Prime Minister, because Labour had become the largest Opposition Party, which made it almost impossible for the Prime Minister to be in the Lords. Lord Curzon in his disappointment said of Baldwin "A man of no experience and of the utmost insignificance." This comment is an eloquent testimony of the real power still exercised by the King.

Selection of  
Prime  
Minister by  
the King

In 1924, though the Labour party could form only a minority government, yet George V named Ramsay MacDonald Prime Minister, thus making possible the first Socialist government in British history. Finally, on his own initiative the King travelled from Balmoral to London

The King's  
part in  
promoting  
Coalition  
Government

on August 22, 1931, in the middle of the financial crisis, and persuaded MacDonald to form a National Government.

The intervention of the monarch is of great value. While ministers come and go, he remains. "As the irremovable adviser of successive ministers, sovereign can do much to secure the continuity of foreign policy and to prevent the foreign relations from being at the mercy of sudden impulse."

The King  
secures con-  
tinuity in  
policy

The King is the symbol of unity of the vast British empire, the parts of which are bound together by the sentiment of loyalty to the Crown. Since the passing of the Statute of Westminster (1931) his person has become the chief link between England and the Dominions. But Prof Laski holds that "the unity of the empire will be maintained so long as it is valuable to its constituent parts to maintain it. While that value persists, the Crown will necessarily have value as the symbolic representation of that unity. The part it plays in the empire will be determined by the interplay of the political and economic forces which now exercise a centripetal influence upon its inter-relations. No amount of turgid rhetoric will conceal the fact that it has not, and can not have, an imperial policy of its own. What it says and does will be what its ministers in the empire advise it to say and do."

He is the  
symbol of  
unity

The monarch is the head of the English society and his ceremonial duties are his most conspicuous functions. By his personal character he can exercise a good or bad influence on society. The abdication of King Edward VIII shows that the ministers are responsible even for the marriage of the King. The ministry did not like to see the position of the monarchy and the prestige of the country lowered by the spectacle of the sovereign marrying a twice-divorced lady.

## VIII. History of the Cabinet System

### Its Origin and Development

The Cabinet is an informal but permanent caucus of the Parliamentary chiefs of the party in power. The growth of the Cabinet System has been slow, gradual and disguised at every step with legal fiction.

From the legal point of view the Cabinet is only a committee of the Privy Council, which again is a lineal descendant of the Norman Great Council. Before the accession of Charles I the King used to consult some persons, selected from the Privy Council. The word 'Cabinet' is first found in Bacon's Essays, but Clarendon in 1640 makes the first definite allusions to this informal body consulted by the King. The public regarded this body with suspicion and jealousy, as the advisers, being unknown to law, could not be held responsible to Parliament.

A committee  
of the Privy  
Council

In the reign of Charles II the Privy Council grew to be an unwieldy body. Clarendon divided the Privy Council into four committees, entrusted with particular departments. But over and above these committees there was a small informal committee which was consulted by the King on questions of general policy. In this informal committee lay the germ of the Cabinet System. The Cabal Ministry was such an informal committee whose sole object was the furthering of the King's interests. Its unpopularity suggested to Sir William Temple the need for a reform of the Privy Council. He proposed to form a new council of thirty members of whom half were to be servants of the Crown and the other half to be public men. But it was too large a body for administrative purposes. So the scheme did not succeed. Charles II again began to consult his favourite ministers. In 1679, he practically suppressed the Privy Council as an executive body. In the reign of Queen Anne the Privy Council used to meet for formal approval of business which had been worked through by a Committee of Council, at which the Queen might be present, while the Cabinet, wherein the Queen sat, took the essential decisions. Under George I the Cabinet became dissociated from the Council in form through the constant absence of the King.

The committee supersedes the Privy Council

In the seventeenth century Parliament tried to establish the theory of ministerial responsibility by reviving the practice of impeachment. Buckingham and Wentworth were impeached in the reign of Charles I. The impeachment of Danby in the reign of Charles II definitely established the theory of ministerial responsibility. But the principle of collective responsibility of ministers was not evolved in the seventeenth century. The evolution of the Party System in the reigns of the last two Stuarts helped the growth of the Cabinet System. But the Cabinet was not composed of members of a particular party holding majority in the House of Commons before 1688.

Impeachment

William III at first selected his ministers indifferently from both the parties. But this method destroyed the unity of the Council. So in 1695 Sunderland persuaded the King to select ministers from the Whigs who held the majority in the Commons. But as yet there was no political chief among the ministers and the King presided over the Cabinet meetings.

Influence of the Party System

In 1701 a deliberate attempt was made by Section 3 of the Act of Settlement to arrest the development of the Cabinet System by reviving the power of the Privy Council. But this clause remained a dead-letter. In the reign of Queen Anne the Cabinet Council generally corresponded with the majority of the House of Commons.

Attempt to check the growth of the Cabinet



The Cabinet System was fully developed after the accession of the Hanoverian dynasty. The first two kings of the dynasty—George I and George II were German by nationality.

**Walpole as the first Prime Minister** They had no command over the English tongue and no interest in English politics. They ceased to attend Cabinet meetings. Two very important results followed from this. The ministers could debate more freely among themselves and present to the King a common concerted plan. Moreover, in the absence of the King they had to select a president to preside over the meetings of the Cabinet. This president became their recognised chief and was known as the Prime Minister. Sir Robert Walpole was the first statesman, under whom all the characteristics of Cabinet Government developed. He may be called the first Prime Minister of England. During his ministry the Cabinet was comparatively a large body, whose members were summoned mainly to approve decisions already taken by a small body, composed of the Prime Minister, the Chancellor, and the two Secretaries of State.

Up to the year 1782 the Cabinet contained some members who were not in harmony with the party in power. **Rockingham ministry** Lord Rockingham's Cabinet in 1782 was the first ministry which was wholly composed of the members of one political party.

Pitt the Younger perfected the Cabinet System by driving out the household officers of the King like the Lord Chamberlain and the Master of the Horse from the Cabinet. His Cabinet was composed of the Lord Chancellor, the Lord President, the Lord Privy Seal, the First Lords of the Treasury and Admiralty and the two Secretaries of the State. In 1801 Addington asserted that only a member of the efficient Cabinet is a true Cabinet member. Up to 1806 the Archbishop of Canterbury was a regular member of the Greater Cabinet. Henceforward the distinction between the Inner Cabinet and the Greater Cabinet was abolished.

## IX. Development of the Cabinet since 1914

With the increase in the administrative functions of government, the size of the Cabinet steadily increased. Originally the

**The War Cabinet** Cabinet, at the time of Walpole, consisted of seven to ten active members; but towards the end of the nineteenth century its membership rose to more than twenty. When the strain of the War of 1914 came upon Great Britain, the size of the Cabinet proved a hindrance to the prompt reaching of conclusions. Mr Lloyd George, therefore, created a War Cabinet of five members in 1916. During the emergency of war the party line division was blurred. Of the five members

of the Cabinet, three belonged to the Conservative Party, one to the Liberal and one to the Labour Party. None of the members, excepting the Chancellor of the Exchequer had departmental duties. The members of the War Cabinet, therefore, were available for immediate consultation and they were free from the irritating pressure of minor preoccupations. They could devote their whole energy to the prosecution of the War. In 1917 General Smuts, the Prime Minister of the Union of South Africa, was made the sixth member of the War Cabinet. The War Cabinet exercised dictatorial power. Parliament passed the bills drafted by the ministers. Some of the ministers were not members of either House, and most of them were absent from Parliament.

The principle on which the War Cabinet was based was that the policy should be in the hand of one body and administration in the hand of another, consisting of ordinary ministers. But such a divorce of policy from administration results in the erosion of responsibility. If the ministers have no hand in making decisions of policy, they can not carry it out as mere passive instruments. At the end of the War there was insistent demand for the return to the normal working of the Cabinet System. Lloyd George had to give way and in 1919 the large Cabinet was again established. But an informal body, known as the "Inner Cabinet" grew up within the Cabinet. The Prime Minister discussed policy informally with five or six influential members of the Cabinet and prepared the background of debate for the larger body. The utility of such a body has been described by Mr. Lloyd George in the following words "In most Governments there are four or five outstanding figures who, by exceptional talent, experience and personality, constitute the inner council which gives direction to the policy of a ministry. An administration that is not fortunate enough to possess such a group may pull through without mishap in tranquil season, but in an emergency it is hopelessly lost." Besides the so-called "Inner Cabinet" there has grown up the Committee System in the Cabinet Government. Special problems are referred to a small number of ministers, who take the help of outside experts, examine witnesses, study the questions exhaustively and report to the full Cabinet, which usually accepts the findings.

In 1919 the Haldane Committee on the Machinery of Government laid down, as preliminary desiderata for the effective working of the Cabinet that (a) it should be small in numbers ; (b) it should meet frequently ; (c) it should be supplied in convenient form with all the information necessary to enable it to arrive at expeditious decisions ; (d) it should consult all Ministers affected by its decisions ; and (e) it

Inner  
Cabinet  
and  
Committee's  
of Cabinet

Haldane  
Committee  
Report

should have systematic methods of securing that its decisions were carried out by the departments concerned.

On the outbreak of the present War the size of the Cabinet has again been reduced to ten members. In accordance with the usual emergency practice the members of the Cabinet and junior ministers placed their resignation in the hands of the Premier on the 3rd September, 1939, with a view to facilitate his task of reconstruction of the ministry. Mr. Neville Chamberlain reconstituted the Government with a War Cabinet in which some leaders of the Liberal Party were also taken. But the Labour Party has declined to accept the Prime Minister's invitation to join the reconstructed Government, though it has promised to give full support to all measures for the effective prosecution of war. The present War Cabinet under the leadership of Mr. Winston Churchill, is double the size of the last War Cabinet and there is only one member free from the charge of a Department.

In 1917 the Prime Ministers of the Dominions, together with a representative of India were invited to attend a series of special meetings of the War Cabinet, which became known as "Imperial War Cabinet." In this Cabinet there was no Prime Minister in the true sense, because all the Prime Ministers were equal in status, each owing allegiance to his own Parliament. The decisions of the Imperial War Cabinet were theoretically subject to the approval of the different Parliaments, but in practice the members of the British War Cabinet exercised full control over the forces of the Dominions.

Another significant development in the Cabinet System has been the softening of the rigour of the rule that any member of the House of Commons who accepted a ministerial post must vacate his seat and offer himself for re-election. In 1919 an Act has been passed providing that the acceptance of a ministerial post within nine months after the issue of the Writs for a general election shall not compel the new minister to vacate his seat.

The tradition of secrecy and informality of the Cabinet has been ended by the institution of the Cabinet Secretariat in 1917.

The Cabinet Secretariat has been entrusted with the functions of receiving all documents which a minister may wish to circulate, of preparing the agenda for discussion with the approval of the Prime Minister and of taking down notes of all decisions arrived at. The need of such a body is that in recent years the business of the Cabinet is three or four times as heavy as it was half a century ago; and orderly transaction of business can not be expected without such an institution now-a-days. The secrecy of Cabinet decisions has also been

impaired by the practice of giving the newspapers a brief statement of what has been discussed in the Cabinet

An Act has been passed in June, 1937, fixing a new scale of salary of ministers. "The person who is Prime Minister and First Lord of the Treasury," receives a salary of £10,000 a year. The Principal Cabinet offices are divided into three categories. The following seventeen ministers are in the first category and receive £5000 per year—The Chancellor of the Exchequer, the seven or eight Secretaries of State\* (Home, Foreign, War, Dominion Affairs, Colonies, Air, India, Scotland), the First Lord of the Admiralty; the President of the Board of Trade; the Minister of Agriculture and Fisheries, the President of the Board of Education, the Ministers of Health, of Labour, of Transport, of the Co-ordination of Defence, and of Supply. Those in the second rank are the President of the Council, the Lord Privy Seal, the Postmaster-General, and the First Commissioner of Works whose salaries are normally £3000, but if they are in the Cabinet they receive £5000 each. The Minister of Pensions belongs to the third category and receives £2000 per year

Act regulat-  
ing Salaries  
of Ministers  
1937

The same Act lays down that not more than 14 out of the 17 ministers whose offices automatically carry a salary of £5000, and not more than 21 of the Parliamentary Under-Secretaries may sit and vote in the House of Commons. This means that at least three of the Ministers in the highest category and two Under-Secretaries must sit in the House of Lords.

Cabinet  
Members in  
the House  
of Lords

## X. Principles of Cabinet System

The Cabinet System is based on five out-standing principles. First, the sovereign must be excluded from the Cabinet Council. But the absence of the King from the Cabinet Council does not mean his absence of influence in British politics. He must, indeed, accept the decisions of the Cabinet in the last resort, but he may have considerable influence on those decisions. The monarch has the right to know of important proposals at a stage early enough to enable him to argue upon them, he has the right to discuss their substance with the relevant ministers and he has the right to ask the Cabinet to reconsider its decisions. "The fact that Royal influence," observes Laski, "is both constant and pervasive is beyond discussion. The mere rumour that King Edward VIII was dissatisfied with Mr Baldwin's policy for the distressed areas, made that policy a theme of intense, and even angry national

The position  
of the  
Sovereign

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\*The two offices are often held by the same person, though in the Baldwin Ministry they were held by two different persons.

discussion throughout the brief period of his reign. The determination of George V, as he told Lord Esher, to take a special interest in imperial concerns is hardly likely to be unconnected with the emphasis they received from his successive Governments. An energetic Monarch, skilfully advised, can still play a considerable part in shaping the emphasis of policy "

Secondly, there must be a close correspondence between the political executive and the legislature. The Cabinet is usually selected from the party which holds the majority in the House of Commons. This principle was recognised by William III, when he entrusted the administration to the Whig Junto in 1697. Anne did not like the Whigs, but she had to give them place in the Cabinet when they secured majority in the House of Commons. Walpole remained in office only so long as he could command majority in the Lower House. Even George III recognised the validity of this principle and tried to secure a majority by means of bribery and corruption. Owing to the recognition of this principle the Cabinet can work in harmony with the House of Commons. Moreover, members of the Cabinet must have seats either in the House of Commons or in the House of Lords, in order to answer questions regarding their departments and to control Parliament as well.

Thirdly, there must be political homogeneity in the Cabinet. All the members of the Cabinet must belong to the same party or hold the same political opinion. This is necessary for maintaining unity in counsel. There are free discussions in the Cabinet but a compromise is arrived at in the end. Walpole did something to establish this principle but it was not fully recognised till the formation of the Rockingham Ministry of 1782. A ministry made up of men without common principles would lack power and cohesion.

Fourthly, the Cabinet stands or falls together as a unit. Prof. Hearn is of opinion that the principle of collective responsibility and corporate unity was recognised for the first time in 1782. Lord Morley explains the principle of collective responsibility in the following words: "As a general rule, every important piece of departmental policy is taken to commit the entire Cabinet and its members stand or fall together. The Chancellor of the Exchequer may be driven from office by a bad dispatch from the Foreign Office, and an excellent Home Secretary may suffer from the blunders of a stupid Minister of War." Those ministers who do not like to share the responsibility of a particular measure taken by the Cabinet as a whole have but the alternative of resigning their office as did Mr. Eden on the 20th February, 1938, on account of his disagreement with

Correspondence  
between  
Executive  
and Legis-  
lature

Political  
homogeneity

Collective  
responsibility

Chamberlain on the question of surrendering at the threat of an ultimatum to Italy and Mr. Duff-Cooper in September, 1938, on account of his disapproval of the Munich Agreement. In 1932, when England gave up her Free-trade policy the members of the Cabinet made an "agreement to differ" and every one was allowed to speak freely for or against the proposed measure. But this should not be treated as a precedent.

Fifthly, the Prime Minister keeps a strict control over the members of the Cabinet. Whenever a member persists in holding a different opinion from him, the Prime Minister asks him to resign. The Prime Minister acts as the symbol of unity in the Government.

Subordination to Prime Minister

The successful working of the Cabinet System depends on the spirit of team-work. "Members should work heartily for Cabinet decisions," stated Lord Grey, "should not press personal views unduly on matters not essential, should contend for substance, not form, and each should consider without *amour propre* how his own opinion can be reconciled with that of others. Subject to the qualification of not sacrificing what he regards as essential to the public interest, he should not contend for victory, but work for agreement in the Cabinet. Secondly, when a Cabinet decision is attained, he should accept full responsibility for it. Thirdly, resignation should never be talked about or threatened except on a matter of vital importance, and then only when resignation is really intended."

Principles of conduct of Cabinet ministers

## XI. Nature and Functions of the Cabinet

The Cabinet is the supreme directing authority in the British constitutional system. It is the real executive body in the State. But neither Parliament nor the Courts of law have provided for the Cabinet. It is still unknown to law. Convention alone provides for the essential rules of Cabinet Government. According to Lowell the Cabinet is an informal body whose business is to bring about a co-operation among the different forces of the State without interfering with their legal independence. Its action must, therefore, be of an informal character. A minister is invited to attend the Cabinet by a purely informal note from the Prime Minister. But there is a rule that Cabinet ministers should be sworn of the Council, so as to apply to them the Privy Councillor's oath.

Informal character

Bagehot defined the Cabinet as a "committee of the legislative body selected to be the executive body." But it is really a committee of the party which commands the majority in the House of Commons and is selected by one member of one party in Parliament from among other members of the same party. The Cabinet is an integral and living part of

Living part of the House of Commons

Parliament. It owes its life to the House of Commons but the latter can live only so long as it is prepared to go on giving life to the Cabinet. The relation between the Cabinet and the House of Commons reminds one of the story of a despot who asked an astrologer as to how long he would live. The astrologer replied that the stars have decreed that the king can live only so long as the astrologer himself would live. By this clever answer the astrologer ensured not only his bare life but also a comfortable life.

The functions of the Cabinet have been stated authoritatively by the Machinery of Government Committee, presided over by Lord Haldane in 1918. They are, first, the final determination of the policy to be submitted to Parliament; secondly, the supreme control of the national executive in accordance with the policy prescribed by Parliament; and thirdly, the continuous co-ordination and delimitation of the authorities of the several departments of State. Determination of policy includes the formulation of legislative and financial programme. It takes the initiative in passing all important laws. Private members may indeed bring in bills for consideration in the Legislature, but as the Cabinet possesses majority in the House of Commons, most of the bills emanate from the Cabinet. The control of the Cabinet over finance is greater still. The Cabinet approves of the estimates prepared by the heads of different departments and submits them to Parliament. The House of Commons will give no consideration at all to any request for money that does not come from the Cabinet. The consideration of the financial proposals of the Cabinet by the House has become more formal than real in recent years.

The executive functions are performed by the ministers, each of whom is in charge of a department. But the general policy is determined by the Cabinet as a whole. All matters of importance in the administrative sphere, including departmental reorganisation, such as the reconstruction of the War Office in 1904 and the readjustment of the Air Ministry in 1938 are brought before the Cabinet.

The Cabinet, however, is excluded by custom, from considering the annual budget statement, including proposals of new taxation, which is orally communicated to the Cabinet shortly before actual presentation. A Cabinet Member, the Colonial Secretary, Mr. Thomas, was found guilty of disclosing the proposed taxation in 1936. The Chancellor of Exchequer is allowed to prepare his plans without the aid of his colleagues in the Cabinet. Similarly, the prerogative of mercy is exercised at the sole responsibility of the Home Secretary; criminal prosecutions are under the normal control

Functions of  
the Cabinet

Legislative  
and financial  
functions

Executive  
functions

Affairs  
outside  
Cabinet  
decisions

of the Attorney-General alone ; and the question of conferring honours is left to the discretion of the Prime Minister and the Crown. It would surprise many in India to learn from no less an authority than Prof. Keith that "appointments do not normally come before the Cabinet, though there is no absolute rule. The Cabinet has been consulted from time to time as to the mode in which vacancies should be filled, though no doubt this sort of enquiry is best made privately "

## XII. The Process of forming the Cabinet

The first step in the formation of the Cabinet is the choice of a Prime Minister by the Sovereign. The King could choose a Peer or a Commoner as Prime Minister before 1923. No Peer has been Prime Minister since the resignation of Lord Salisbury in 1902. In 1923, the King selected Mr. Baldwin in preference to Lord Curzon to succeed Mr. Bonar Law on the ground that the Labour Party constituting the official Opposition was unrepresented in the House of Lords and that the Prime Minister must have his finger on the pulse of the House of Commons, which can compel the Government to resign. Mr Baldwin also did not like to continue his Premiership when he was transferred to the Upper House with the title of Earl Baldwin. The King, thus, must select the Prime Minister from the House of Commons.

The Prime Minister must belong to the House of Commons

The range of the King's choice depends on the state of parties in the House of Commons. If one single party commands a majority and if it has a recognised leader, the King can have no other alternative but to choose him. If there is no recognised leader of the majority party, as was the case with the Liberal Party after the resignation of Gladstone in 1894, the monarch exercises his or her discretion in selecting the Prime Minister from among a number of possible candidates. But the monarch must select such a person who can form a Government and has a reasonable chance of retaining confidence of the House of Commons. Where the complexities of the Party system do not directly indicate an obvious Prime Minister, the King can also exercise his discretion. In 1931 the Prime Minister, Mr. Ramsay MacDonald was expelled from the Labour Party and Mr. Henderson was elected the Leader of the party. The Labour Party had 289 members, but all except 16 members revolted against Mr Ramsay MacDonald, who resigned on August 23rd on account of financial difficulties about the solution of which the Labour Ministry could not agree. Mr Baldwin, the leader of the next majority party, or Mr Henderson would have been the next Prime Minister under normal circumstances. But

Influence of the King in selecting Prime Minister



Sidney Webb writes that George V made a strong appeal to Mr. Ramsay MacDonald "to stand by the nation in this financial crisis and to seek the support of leading members of the Conservative and Liberal Parties in forming, in conjunction with such members of his own party as would come in, a united National Government. The King is believed to have made a correspondingly strong appeal to the Liberal and Conservative leaders." The result was that Mr. Ramsay MacDonald was chosen as Prime Minister of the National Government. Prof. Laski observes that the new Cabinet had "as much the character of a Palace revolution as the appearance of Lord Bute as Prime Minister in 1763." He comes to the conclusion that at the time of a political crisis the King must be regarded as a factor of first-class importance.

The Prime Minister, having taken office, selects his colleagues, some sixty in number, of whom from twenty to twenty-three are taken in the Cabinet. The Chancellor of the Exchequer, the First Lord of the Admiralty, the eight Secretaries of State, the Presidents of the Boards of Trade and Education, the Ministers of Labour, Health, Agriculture and Fisheries and Transport, and the Postmaster-General are invariably taken in the Cabinet in normal times. Besides these, some ministers like the Lord Privy Seal and the Lord President of the Council who have little administrative duties are taken in the Cabinet. The Prime Minister selects such persons as would work faithfully under him and have influence in the party. In theory the Prime Minister nominates, or technically recommends ministers and the King appoints them. Though the monarch exercises some power even in the selection of other ministers, yet the Prime Minister has the final word as against the King, because he must have a Government which can work together and which can secure the support of the House of Commons.

Selection of  
other  
Ministers

### XIII. The Position and Functions of the Prime Minister

Lord Morley described the Prime Minister as the keystone of the Cabinet arch. He forms the Cabinet, keeps the team together, and can compel the resignation of any or all of his colleagues. He is not only the head of the Executive but also the leader of the Legislature. An accurate observer has truly pointed out that "An English Prime Minister with his majority secure in Parliament can do what the German Emperor and the American President and all the Chairmen of the Committees in the United States Congress can not do, for he can alter the laws, he can impose taxation or repeal it, and he can direct all the forces of the State."

Importance  
of Prime  
Minister

But the Prime Minister of England was unknown to the law until 1905. A Royal Proclamation of December, 1905, gave place and precedence to the Prime Minister next after the Archbishop of York. The Ministers of the Crown Act, 1937, recognises his position by providing for him the salary of £10,000 a year as Prime Minister and First Lord of the Treasury. His unique position is further attested by the grant of a pension of £2000 a year to all ex-Prime Ministers.

Legal  
recognition  
of his  
position

Walpole in the eighteenth century refused to admit that there was any Prime or supreme minister and Gladstone at the end of the nineteenth century wrote that the "Head of the British Government is not a Grand Vizier. He has no powers, properly so-called, over his colleagues. On the rare occasions when a Cabinet determines its course by the votes of its members, his vote counts only as one of theirs." Both of these illustrious Prime Ministers underestimated the importance of the office they held. The position of the Prime Minister depends largely on his personality. Prof. Chase observes that "in recent years the position of Prime Minister has tended to become quasi-presidential; chosen by popular acclaim he holds his office independent—or largely so—of his colleagues and even of Parliament." But this view is vigorously contested by Prof. Laski who writes "It would be too much to say that the position of a modern Prime Minister has approximated to that of an American President; for the careers of Mr. Asquith, Mr. Lloyd George, and Mr. Ramsay MacDonald all illustrate the fact that his authority is a matter of influence in the context of party structure and not of defined powers legally conferred. But it would, I think, on experience be true to say that the stronger the hold of a Prime Minister upon his Cabinet, the better is the system likely to work."

The supremacy  
of the  
Prime  
Minister

The Prime Minister presides over the Cabinet meeting. His opinion carries great weight with his colleagues. He exercises a general supervision of all the departments. Nothing relating to the general policy or affecting the efficiency of the service must be done without his advice. He takes a particular interest in the Foreign Office, and looks into all the important despatches before they are sent out. He acts as an informal mediator in the quarrels between the different departments and ministers. He represents the Cabinet in its relation to the Crown. He alone is entitled to report to the King the decision of the Cabinet. When he resigns his post, the whole Cabinet is dissolved and the King must entrust the formation of the ministry to another person. The Prime Minister makes statements of general nature to Parliament, while other ministers speak about their respective departments only. He

His  
functions

keeps a careful watch over all government bills in Parliament and is expected to speak not only on general questions but also on the most important government bills. Lastly, the Prime Minister exercises a good deal of patronage. He appoints all the ministers and under-secretaries. All the higher ecclesiastical offices are filled up by his advice. He can confer peerage and other honours.

#### XIV. The Privy Council

The Privy Council is one of the four inter-connected chief institutions through which the powers of the Crown are exercised; the other three being the Ministry, the Cabinet and the permanent Civil Service. The Privy Council derives its origin from the Curia Regis which was a part of the Norman Great Council. In the reign of Henry VI (1422—1461) the Permanent Council of the Great Council was virtually superseded by another inner circle of councillors, called the Privy Council, which now became the chief executive body of the realm. Under the Tudors the Privy Council, depending absolutely on the favour of the monarch, performed almost all the functions which are now carried on by the Cabinet. In the seventeenth century the Privy Council itself became comparatively a large body and the functions of advising the King and carrying on the Government devolved on a smaller selective group, known as the Cabinet. The Privy Council has ceased to be a deliberative or advisory body; now-a-days it performs some very important work indeed, but its services are mostly of a formal character. Ministers take their oath, receive the insignia of office and kiss the King's hands in the Privy Council. The Cabinet frames policy and decides what orders shall be given, but it is the Privy Council which gives orders. The Orders-in-Council are the mode of expressing certain matters of special importance in the sphere of prerogative, such as summoning, proroguing and dissolving Parliament, orders relating to the Government of the Crown Colonies, and orders granting Royal Charters to Municipal Corporations and other bodies. Besides these, the Orders-in-Council are also the mode in which is exercised much of the delegated legislative power conferred by Parliament on the executive Government. Six different kinds of power are delegated by Parliament to the Privy Council: (a) The power to lay down general rules e.g. as to the administration of workhouses, (b) to issue particular commands e.g. to the authorities who have failed in duty, (c) to grant licenses, (d) to remit penalties, (e) to order inspection, (f) to hold enquiries e.g. as to railway accidents.

The peculiar procedure of the Privy Council makes it possible

for the Cabinet to leave so many important functions to the Council. The general body of Privy Counsellors is never called together except when a new sovereign is to be crowned or some other solemn ceremony is to be performed. The Council in passing orders consists of the King and not less than three Counsellors, four being usually summoned. Usually the four members invited to attend are Cabinet ministers or ministers. The Clerk of the Council issues the summons. The Lord President of the Council is invariably and the King is usually present in the Council. But the full Council consists of more than three hundred and fifty members, and most of them are seldom or never summoned to attend the Council. All Cabinet ministers, past and present, some other great officers of the state, the two Archbishops and the Bishop of London, some of the highest judges and ex-judges, a few colonial statesmen, a large number of peers and others who are given the title of "Privy Counsellor" for their political, literary, scientific or military services are members of the Privy Council.

Procedure  
and composition  
of the  
Council

Important administrative boards like the Board of Trade and the Board of Education originated as Privy Council Committees. The growth of professional organisations (e.g. General Medical Council and Medical Research Council) with statutory powers of regulating entry into and discipline within their professions has added to the functions of the Privy Council. The Department of Scientific and Industrial Research controlling the Geological Survey, the National Physical Laboratory and certain other Research Stations, is directly subordinate to the Privy Council. The Judicial Committee of the Privy Council, consisting of twenty or more members including the Lord President of the Council, the Privy Counsellors who hold or have held high judicial positions, the Lord Chancellor, the six Lords of Appeal in ordinary and varying number of judges from overseas superior courts, acts as the highest court of appeal from ecclesiastical courts, prize courts, courts in India, courts in the Channel islands and the Isle of Man, courts of some of the Dominions and of all the Colonies, and from English courts established by treaty in foreign countries.

Committees  
of the  
Privy  
Council

## XV. His Majesty's Government and Executive Departments.<sup>2</sup>

HIS Majesty's Government consists of about sixty-five persons, who constitute "the ministry." Though the ministry as such never meets, yet they are all united by virtue of their belonging to one party or to one conscious coalition. The Ministry They come into office and resign together. Each

The  
Ministry

Minister is individually responsible in law for his acts as a minister and at the same time they are jointly responsible politically for the policy of the Government. There are twenty-four chief Departments, each under a responsible Minister. There are, in addition, three Ministers at the head of subordinate departments—the Department of Overseas Trade, the Mines Department, and the Paymaster-General's office—who are under the general control of other Ministers. Besides these, there is in most departments at least one other Minister who acts on the general instructions and is subject to the control of the Minister at the head of the Department. The subordinate departments and semi-autonomous bodies like the Unemployment Assistance Board, the London Passenger Transport Board, the Central Electricity Board, have in practice a measure of autonomy, though the Minister and his advisers are consulted in matters of political importance or in matters for which the consent of the Minister is prescribed by law. The Departments of the House of Lords Offices, the House of Commons Offices, the Charity Commission and the Ecclesiastical and Church Estates Commission are represented in Parliament but not by Ministers. There are some Departments, as for example, the Exchequer and Audit Department, the Royal Household, the Offices of the Duchy of Cornwall and the County Palatine of Durham, the Lord Great Chamberlain's Department, the Herald's College, which are not represented in Parliament.

The twenty-four chief Departments may be classified as political, economic and social. The examples of political Departments are the Foreign Office, the War Office, the Admiralty and the Home Office ; those of economic Departments are the Board of Trade and the Ministries of Labour and Agriculture and Fisheries ; while Departments of social character are the Ministry of Health and the Board of Education. Such a classification, however, is not satisfactory as the work of one Department shades into another. A brief description of the Chief Departments is given here to give some idea of the complexity of administrative organisation in the English Constitution.

The Treasury is the oldest and the most important Department, exercising a considerable amount of control over other Departments by reason of the fact that it determines the classes of officers to be employed therein and the scale of their salaries. It is in theory a Board which, however, never meets. The Prime Minister as First Lord of the Treasury is a member of this Board. The Treasury as ministry of finance is, however, under the control of the Chancellor of the Exchequer. He is assisted by the Financial Secretary to the Treasury, who is

Classifica-  
tion of  
Depart-  
ments

Composi-  
tion of the  
Treasury

the most important of the Junior Ministers, and who is occasionally a member of the Cabinet. The Parliamentary Secretary to the Treasury is Chief Government Whip in the House of Commons and the three Junior Lords are also Government Whips. Besides these political officers, who stand or fall along with the Cabinet, there is the Permanent Secretary, and non-political Civil Servant, who is in charge of the three main sections of the Treasury, *viz.* (1) the Department of Establishments, which deals with the staff of government departments and related matters, (2) the Department of Supply Services, which deals with other financial business of the departments, (3) and the Department of Finance, which administers the fiscal business of the Treasury

The Treasury assures the collection of the revenue, through the Boards of Customs and Inland Revenue, the Post Office, and the Commissioners of Crown lands. It proposes new taxes so that all the Departments of Government may have adequate funds. It exercises a rigorous control over expenditure, especially in the form of preparing the estimates or supervising their preparation. It initiates and carry out measures affecting the public debt, currency and banking and prescribes the manner in which the public accounts shall be kept. The Bank of England is a semi-public institution which, in respect of some of its activities, is subject to the control of the Treasury. It is a curious fact that the Chancellor of the Exchequer is not in charge of the Exchequer. The Exchequer is entrusted with the function of seeing that the money is disbursed according to law, and it is under the direction of the Comptroller and Auditor-General.

The Admiralty, the Air Ministry, the War Office, and the 'Ministry of the Crown for the Co-ordination of Defence', created in 1936 are responsible for defending the country and the empire. The Board of Admiralty is composed of the First Lord, (who is responsible for the Department and can over-rule the Board), the First Sea Lord (who is also Chief of the Naval Staff), the Second Sea Lord (who is also Director of Naval Personnel), the Third Sea Lord (who is also Controller), the Fourth Sea Lord (who is also Chief of Supplies and Transport), the Deputy Chief of Naval Staff, the Parliamentary and Financial Secretary, the Civil Lord, and the Permanent Secretary. The First Lord is a member of the Cabinet. The Parliamentary and Financial Secretary and the Civil Lord are junior ministers, the four Sea Lords are naval officers and the Permanent Secretary is a Civil Servant. The War Office is under the control of a Secretary of State who is a member of the Cabinet and who is assisted by two Junior Ministers, the Parliamentary Under-Secretary of State and the Financial Secretary to the

Functions  
of the  
Treasury

The  
Defence  
Ministries

**War Office** The Army is controlled by the Army Council, which consists of the Secretary of State, the Parliamentary Under-Secretary, the Financial Secretary, the Chief of the Imperial General Staff, the Adjutant-General, the Quartermaster-General, the Master-General of the Ordnance, the Permanent Under-Secretary of State and the Director-General of the Territorial Army. The Air Ministry is under the control of the Secretary of State for Air, assisted by a Junior Minister, and the Parliamentary Under-Secretary for Air. The Air Council was reconstituted in July 1938 with the Secretary of State, the Chief of the Air Staff, the Member for Personnel, the Member for Supply and Organisation, the Member for Development and Production, the Parliamentary Under-Secretary and the Permanent Under-Secretary as members.

The foreign and imperial relations are in charge of the Foreign, Dominion, Colonial and India Offices. The Foreign Secretary has got two Under-Secretaries while the three other Offices have got one each. The Foreign Office receives and sends despatches on foreign affairs, controls with the assent of the Prime Minister the Diplomatic and Consular Services and is responsible for the Government of the Anglo-Egyptian Sudan and of those Protectorates which are not controlled by the Colonial or India Offices. The Dominion Office transmits the information regarding foreign affairs prepared by the Foreign Office and corresponds with the external departments of the Dominions. It also conducts the relations of the British Government with Newfoundland and Southern Rhodesia. The Secretaryship of the Dominion and the Colonial Offices were held by the same person up to 1930; but now they are held by two separate Cabinet Ministers. The Colonial Office controls all the Colonies not possessing responsible Government, all the Protectorates, including Protected States and the British Mandated Territories. The functions of the India Office will be described in the Chapter on Indian Constitution.

The Home Office receives and transmits petitions to the Crown, prepares and countersigns warrants, controls the Metropolitan Police and the Prison Commission, and grants certificates of naturalisation. The Home Secretary has also duties in respect of theatres and cinematographs, of habitual drunkards and lunatics, of safeguarding children against White Slave Traffic, and of licensing the sale of intoxicating liquors. He deals with certain matters affecting the health and safety of those engaged in trade. The Home Office sees to the registration of voters and supervision of elections. The Home Secretary advises the Crown as to the exercise of the prerogative of mercy.

The Lord Chancellor is another important Cabinet minister who is the President of the House of Lords, and who presides over the Court of Appeal, the High Court and the Chancery Division. The Great Seal is in his charge and he can appoint and remove Justices of Peace and County Court Judges.

The Board of Trade, the Ministry of Transport, the Ministry of Agriculture and Fisheries, the Ministry of Labour, the Ministry of Pensions, the Office of Works are concerned with the promotion of economic activities. The Board of Trade is empowered by the Import Duties Act of 1932 to impose special duties on imports from countries which discriminate against British trade. The Mines Department, the Bankruptcy Department, the Companies (winding-up) Department, and the Patent Office are subordinate to the Board of Trade. The Marine Department of the Board deals extensively with merchant shipping and seamen. The Ministry of Transport looks after railways, canals, waterways, inland navigation, tramways, roads, bridges and ferries, vehicles and traffic, and harbours, docks and piers. The Central Electricity Board and the London Passenger Transport Board are connected with the Ministry of Transport. The Ministry of Agriculture and Fisheries administers subsidies provided for beet, sugar and cattle, and is partly responsible for setting up the Marketing Boards. Assistance to agricultural producers may be given by a Mortgage Corporation in the form of credits. The Ministry of Labour is advised by an Unemployment Insurance Statutory Committee and by Cotton Industry Boards. The Ministry has certain statutory powers over the Unemployment Assistance Board.

The  
Economic  
Depart-  
ments

The Ministry of Health has duties relating to the health of mothers and young children, to the medical inspection and treatment of school children, to infant life protection, to the health of disabled officers and men after they have left the service and many other matters. It has wide powers of control, mainly by inspection, grants and sanctions over local authorities, water undertakers and housing associations. The Board of Education distributes grants and controls the whole course of educational development, so far as it receives public aid.

The Social  
Depart-  
ments

## XVI. His Majesty's Opposition

'His Majesty's Opposition' is second in importance to 'His Majesty's Government.' It is a part of the mechanism of the State in Great Britain. The Act of 1937 which settled the scale of salary of ministers of the Crown also granted a salary of £2000 a year to the leader of the Opposition. It seems paradoxical that the public should pay such a salary to enable the leader of the Opposition to obstruct public business as much



as he can, to take the maximum advantage of the Government's mistakes, and to try to prove that the Government is ruining the country. More absurd is the fact that the Government sets aside time in order that the Opposition may censure the Government. But it does not appear absurd at all when we consider that the Opposition provides the major check upon corruption and defective administration. The existence of the Opposition shows that the Government is prepared to meet criticism by rational argument.

The Opposition tries to come to power by dislodging the Government from office. The leading persons in the Opposition camp form the "shadow cabinet." They do not usually raise issues which are fundamental in character. There is general agreement between the Government and the Opposition in essential matters. The co-operation between the parties is closest in war or in time of threat of war, or at any other grave crisis. The Labour Government of 1929—1931 invited the Opposition leaders to take part in some aspects of the work of the Committee of Imperial Defence. Both the Liberal and the Conservative leaders came forward to help the Labour Government during the crisis of 1931. The Labour leaders in Opposition in 1937—38 did not attack the ministry on the ground that they were not taken into confidence regarding defence measures. They have promised to help the Government in the prosecution of the War in September, 1939. All the parties have so long pledged themselves to the protection of private ownership of means of production. But with the growth of economic discontent it is likely that the Labour Party would seek to destroy private property. In that case the agreement between the Government and the Opposition would cease to operate. But at present the government is carried on by the Prime Minister in close collaboration with the leader of the Opposition. Hence Bernard Shaw has remarked that "The English Prime Minister knows the leader of the Opposition better than he does his own wife."

## XVII. The Permanent Civil Service

It has been said that the efficiency of English administration is due to the efficient staffs of permanent Civil Servants. The Civil Service is the incorruptible spinal column of England. As has been already stated, the ministers who are the departmental heads are mostly amateurs and besides, their tenure of office is quite short. But the Civil Servants who are skilled in the technique of detailed administrative work, can well manage the departments. The Civil Servants are non-party men and are not allowed to take part in politics. The principles upon which Civil Servants act have

Relation of  
Civil  
Service  
with  
Ministers

been stated by Sir Warren Fisher in his Evidence before the Royal Commission on the Civil Service in 1929. He observes that "Determination of policy is the function of ministers, and once a policy is determined it is the unquestioned and unquestionable business of the Civil Servant to strive to carry out that policy with precisely the same good will whether he agrees with it or not. That is axiomatic and will never be in dispute. At the same time it is the traditional duty of Civil Servants, while decisions are being formulated, to make available to their political chiefs all the information and experience at their disposal, and to do this without fear or favour, irrespective of whether the advice thus tendered may accord or not with the minister's initial view. The presentation to the minister of relevant facts, the ascertainment and marshalling of which may often call into play the whole organisation of the department, demands of the Civil Servant the greatest care. The presentation of inference from the facts equally demands from him all the wisdom and all the detachment he can command."

The Civil Servants were formerly recruited by nomination but as this system did not ensure efficiency a change was found desirable. The East India Company obtained good results by introducing the system of competitive examination in recruiting their officers. This example was taken up by the English Government and in 1854 a Commission headed by Macaulay recommended the step. In 1870 Gladstone issued an Order-in-Council making open competitive examinations obligatory practically throughout the Civil Service. The examination for entry is a test of general intelligence, and not of special qualifications for a particular department. The Civil Service, in the broadest sense, consists of some five lakhs of persons, of whom 3,30,000 are employed in industrial establishments such as the Arsenal and the Dockyards and the Post Office. They carry out merely routine work and are not called upon to display initiative nor to take responsibility. The second class consists of some 70,000 clerical officials, who for the most part perform routine work, and apply well-worn precedent to new material. The third class consists of 16,000 executive officials, some 2500 inspectors in different departments, and nearly 7000 professional, technical and scientific workers. These officers are responsible for preparing the materials for policy, and not for initiating policy. The highest class of officials, consisting of some thirteen hundred members, who advise the ministers and play an important part in shaping policy. They are usually brilliant graduates of Oxford and Cambridge, and belong to the same social class as the ministers. Seventy-five per cent of the Civil Servants, in the broadest sense, receive less

Classes of  
Civil  
Service and  
their salary

than rupees two hundred and forty per month or four pounds per week. There are only some five hundred posts of which the salaries are £1000 per annum and upwards. Heads of departments receive £3000 per year or Rs 4000 per month. Considering the much higher cost of living in England, the highest grade of Civilians receive much lower salary than the members of Indian Civil Service. The members of Civil Service are allowed to vote in parliamentary elections. But with a view to safeguard their absolute neutrality they are denied the right to contest in any election, central or local. They are not even allowed to participate in any political controversy nor to write on current affairs.

The Civil Service in England is exceptionally efficient and free from corruption. Its efficiency is due to the method of recruiting and promotion, the security of service and guarantee of pension. It has been able to attract the best class of men and women to it. It avoids partisanship partly because its members are forbidden to take part in politics, but mainly because its members through long tradition think of themselves as administrators and pride themselves on their ability to carry out the decisions of the Labour, Conservative or Coalition Governments with equal aptitude. There has been indeed some criticism of the Civil Service in recent years. The main charge against it is that it is deliberately seeking power and attempting to set up a Bureaucracy in England. We shall discuss this charge in a later Chapter.

It has been pointed out by some critics that the system of examination is faulty, that too much emphasis is laid on the classics which gives advantage to the graduates of Oxford and Cambridge, and that the departments work at a very slow speed. High posts are still practically reserved for the sons of the upper classes in society, because of the insistence on high academic qualifications, which can be secured by those who can afford to pay the expenses. Most of these criticisms are not well-deserved. Prof. Laski, who has been a member of the Civil Service Tribunal for a long time, observes that a number of officials, whose ability would fit them for the highest class of work remain unused or undiscovered mainly because the grades of the service are too rigid, the methods of promotion below the administrative class are too mechanical and because very little encouragement is given to deserving officers. Another charge against the Civil Service is that its members took the initiative in increasing the scale of their own remuneration. Its critics point out that with the increase in salary there has not occurred a corresponding increase in efficiency or devotion to duty.

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## CHAPTER XXIV

### THE ENGLISH CONSTITUTION (Contd.)

#### LEGISLATURE AND JUDICIARY

##### I. The Sovereignty of Parliament

The chief characteristic of the English Constitution is the Sovereignty of Parliament. The supremacy of Parliament appears from a superficial study to be limited by the authority of the King, by the discretion of the Judges, by the power of the Cabinet and the Civil Service. But Parliament does actually control all these agencies of Government. George VI owes his very position to the Act of Settlement of 1701 and the Abdication Act of 1936. It has already been shown that most of his political activities are controlled by ministers, who are responsible to Parliament. The Judges can indeed make law by their interpretation of law, but Parliament can overrule their decision by statute. The judges decided in the Taff Vale case in 1901 that the Trade Unions could be made responsible for damages, but the Trades Disputes Act of 1906 counteracted this decision. The ministers exercise great powers only with the consent of Parliament. The Civil Service derive their authority from statute and are subject to parliamentary criticism. The Sovereignty of Parliament may be exemplified, by a reference to the three propositions, propounded by Mr Dicey :—(i) There is no law which Parliament (i.e. the King-in-Parliament) cannot make ; (ii) There is no law which Parliament cannot repeal or modify ; (iii) There is under the English Constitution no marked or clear distinction between laws which are not fundamental or constitutional and laws which are. Parliament has power to make any change in the constitution it likes. It altered the succession to the throne by the Act of Settlement in 1701. It changed the religion of England by the Act of Supremacy in 1534. It enacted a legislative union with Scotland in 1707 and with Ireland in 1800. These two Acts of Union fundamentally changed the constitution of the House of Commons and the House of Lords. The most striking instance of the omnipotence of Parliament is to be found in the passing of the Septennial Act in 1716. The Parliament which had been elected for three years in 1715 not only extended the duration of future parliaments from three to seven years, but also prolonged its own duration by four years by this Act. The Septennial Act “proves to demonstrate that from a legal point of view Parliament is neither the agent of electors nor in any sense a trustee for its constituents. It is legally the sovereign power of

Parliament  
can change  
the consti-  
tution

the state, and the Septennial Act is at once the result and the standing proof of such Parliamentary sovereignty ”

Parliament can repeal any law it likes. It is impossible to limit the absolute sovereignty of Parliament even by passing laws declared to be unchangeable. Thus though the permanence of the established church of Ireland was guaranteed by the Act of Union, yet the Irish church was dis-established in 1869.

In the Constitutions of France and U. S. A. a distinction exists between the Fundamental or Constitutional laws and the Ordinary laws. The legislatures of these countries are not competent to change the fundamental laws. But there is no such fundamental law in the English Constitution. No other body in the state has any power of legislation independent of Parliament. Even the legislatures of the Self-governing Dominions make laws by virtue of the delegation of power by Parliament. The Stuart kings had claimed and exercised the power of making law by their prerogative authority. But the Glorious Revolution finally established the sovereignty of Parliament.

## II. Composition and Functions of the House of Lords

The House of Lords is composed of hereditary peers, elective peers, spiritual lords and Law Lords. Conferment of a baronage necessarily bestows the right to a seat in the House of Lords. Only one member of a noble family may sit in the Lords, though his sons may bear the title of barons, unless, of course, any of those sons is made a baron in his own right. On the passage of the Act of Union of 1707 sixteen Scottish peers were added to the House of Lords. It was arranged that at each new Parliament the whole body of Scottish peers should meet and elect sixteen of their members, for the duration of that Parliament. Similarly, certain peers are elected by the Irish peers of Northern Ireland. Besides the hereditary and elective peers, the two Archbishops and twenty-four of the Bishops sit in the House of Lords by virtue of their office. Further, there are seven Law Lords, or more strictly, Lords of Appeal in ordinary, who sit as life peers only, unless they are, beyond this ex-officio ennoblement, created peers in the usual way, in which case, of course, they become hereditary peers.

There are in all over seven hundred and fifty members of the House of Lords, of whom Lord Sinha is the only Indian peer. But the normal attendance of the House is about thirty-five. During the last twenty years only on thirteen occasions more than two hundred members have been present in any debate. This is due to the fact that peerage is conferred on

people who are very wealthy or influential in the Party or on persons who have acquired eminence in Arts, Letters, Science, Trade, Industry or in Civil and Military Service. Very few of them have any real interest in politics. Mr. Ramsay Muir has called the House of Lords "the common fortress of wealth."

The powers of the House of Lords up to 1911 were theoretically co-equal with those of the Commons. But the Parliament Act of 1911 has restricted the power of the House

in several important particulars. The power of the House of Lords over Money Bills has been virtually abolished by the Act of 1911. If the Lords withhold their

assent from a Money Bill, (that is, a Bill raising taxes or making appropriations and decided by the Speaker of the House of Commons as a Money Bill) for more than one month after it has been passed by the House of Commons, the Bill may become an Act on the Royal assent being signified without the consent of the Lords. The Act of 1911 has also curtailed the legislative authority of the House of Lords. If a Bill other

than Money Bill is passed by the Commons in three successive sessions, whether of the same Parliament or not, and is rejected by the Lords, it may on a third rejection by them be presented for the King's

assent and on receiving that assent will become a law, notwithstanding the fact that the House of Lords has not consented to the Bill, provided that two years have elapsed between the second reading of the Bill in the first of those sessions and the date on which it passes the Commons for the third time. Under such procedure the Welsh Church was dis-established. By this Act the maximum duration of a Parliament has been fixed at five years. It does not sit continuously throughout this period. But it sits for certain periods

known as sessions. As a general rule there is one session in each year, beginning about the end of January and ending in August. Occasionally another session is held in autumn.

The Lords used to enjoy certain special privileges, which they have gradually lost. The only formal privileges which they still enjoy are those of access to the King for the purpose of discussing public affairs and of recording a protest against any decision of the majority

of the House in the Journals of the House. Their privilege of voting by proxy was abolished by a Standing Order in 1868. The privilege of being tried by their "peers" in the House of Lords in cases of felony has been abolished by an Act in 1936.

The House of Lords has very little active control over the administration. No ministry resigns simply on account of an adverse vote or a vote of censure in the House of Lords.

The Parliament Act of 1911

Suspensive veto of the House of Lords

Duration of Parliament

Privileges of the Lords

Other powers of the House of Lords

But it would be wrong to think that the House of Lords has lost all its powers. It has the right to remonstrate, the right to criticise, the right to deal freely with all measures, excepting those that involve the fate of parties; the right to formulate an emphatic protest against legislation of which it disapproves, and the right to compel a government to submit its controversial proposals to more than two years of public discussion before it could pass them into law. The House of Lords performs some very useful public services. (1) It is a revisory chamber in a limited sense. The Lords cannot altogether reject a measure passed by the Commons, but they can postpone it for two years. Many Bills are found after two years to have been imperfect. "Time reveals defects, new points of view develop, grievances change, people want more or less drastic provisions." Thus the House of Lords by its refusal to give assent to a Bill can afford time to the public and the Government for a cool deliberation of the subject. The House of Lords is a ventilating chamber. It is an admirable arena for the discussion of those larger questions of public policy, questions of imperial interest or of social and economic reforms which the Commons, absorbed in the exigencies of the passing hour, dismiss as irrelevant or academic. The House of Lords is a "reservoir of Cabinet ministers." It is very difficult for a Cabinet minister to administer a department and at the same time to attend the sittings of the House of Commons regularly. So some Cabinet ministers are taken from the House of Lords. Ministers for foreign affairs are generally selected from the House of Lords, because a Lord is not to seek election and so is not under the necessity of giving an account of his administration of foreign affairs, which ought to be kept secret. The Act of 1937 provides that there must be at least two Cabinet ministers of the highest rank in the Lords, as well as the Lord Chancellor, and normally the Lord President of the Council or Lord Privy Seal or both. In the Cabinet of Lord Salisbury there were ten peers, in that of Mr Balfour eight and in the Chamberlain Cabinet in June, 1937, six Lords.

The House of Lords is the Supreme Court of Appeal in England. Appeals from India and some of the Dominions are decided by the Privy Council. But the House as a body as long since ceased to exercise its judicial functions, which it inherited from the Great Council of Norman times. These functions are now always exercised by the Lord Chancellor who is the ex-officio president of the House of Lords, and seven Lords of Appeal in Ordinary, who are learned judges appointed as life peers specially to perform this duty. These Law Lords are occasionally

Utility of  
the House  
of Lords

The  
Supreme  
Court of  
Appeal

Life peers

helped by other Lords who have served as judges of the higher courts or who are specially learned in the law.

### III. Strength and Weakness of the House of Lords

It has been said that the strength of the House of Lords lies in its weakness. It is not as powerful an upper chamber as the Senate in the U S A or in France and that is why the existence of the House of Lords has been tolerated during more than two centuries. Its hereditary principle is certainly incompatible with a democratic form of government, but since it is not the creation of a single monarch but is a historical growth, some elements of a representative character have been ascribed to it. It has to be admitted that the House of Lords represents various important interests, experience and knowledge and draws its members from nearly all sections of the English society, excepting, of course, the masses. Of the 729 peers who comprised the House of Lords in May, 1936, 246 owned land, 112 were directors in insurance companies, 74 in financial or investment houses, 67 in banks, 64 in railway companies, 49 in ship-building or engineering companies, and so on. Besides, the House of Lords has a distinctive character of its own, for the ancient lineage in most cases, wealth and social status of its members place the Lords in a position of influence and power. Further, its utility as a check to the Lower House and as a safeguard against the excesses of democratic elements, has been recognised and this fact has rendered the existence of the House of Lords almost indispensable. Prof. Laski, who cannot be suspected of holding any brief for the House of Lords, observes: "For normal purposes, therefore, the House of Lords is a body of less than fifty members. There is no doubt that, as such a body, and in quiet times, it possesses great merit. Its main debates are likely to be conducted, on either side, by statesmen of standing and experience, with occasional interjections from representative churchmen or an eminent law-lord. It is a leisurely chamber; and in quiet times again, it can scrutinize with a leisured efficiency the bills sent up to it from the House of Commons. It can raise, also, large public questions which the Government of the day does not believe to be ripe for legislation."

But it must be admitted that the House of Lords consists of many peers who take little interest in political affairs. It has been calculated that of the 729 peers in 1938, 371 or more than half, never once spoke in any debate in the House of Lords from 1919 to 1931; 111 of them never voted in a single division; the average number taking part in a division was 83. If this be the average number of peers taking active interests, the House of Lords may be as well reduced to two hundred members.



#### IV. Reform of the House of Lords

From time to time the cry has been raised to mend or end the House of Lords. As the parliamentary system has become more and more democratic, the House of Lords appears more and more to be an obsolete anomaly. Ninety per cent of the members of the House of Lords are hereditary peers, while the House of Commons is a representative body. Moreover, the House of Lords, as the "common fortress of wealth" is conservative in temperament and opposed to all socialistic ideas. When the Government is formed by the Conservatives there prevails harmony between the two Houses; but when the Labour Government comes to office with a programme of social amelioration and redistribution of national income, the House of Lords offers stout resistance. Mr. Ramsay Muir is of opinion that since the passing of the Parliament Act of 1911 the House of Lords has become "only a revising and delaying body; and not very effective even for that purpose." But the House of Lords can effectively use its delaying power at exactly the moment where it needs the power to fight against the encroachment of their wealth. The Socialistic ground of opposition to the House of Lords has been stated by Sidney and Beatrice Webb thus: "Its decisions are vitiated by its composition—it is the worst representative assembly ever created, in that it contains absolutely no members of the manual working class; none of the great classes of shopkeepers, clerks and teachers; none of the half of all the citizens who are of the female sex; and practically none of religious nonconformity, of art, science or literature." No political party in England is satisfied with the composition of the House of Lords, because at present it is an unwieldy body and because majority of its members do not take any interest in politics. The Conservatives as well as the Labour Party are dissatisfied with the present powers of the House of Lords, but on different grounds. The Conservatives wish to restore to the House of Lords the powers it has lost by the Parliament Act of 1911; while the Labour Party does not like to allow it to retain any power to interfere with the effective passage of the Government programme to the statute book.

In spite of the general agreement with regard to desirability of reforming the House of Lords, the practical difficulties in the path of reform have been found insurmountable. Laski observes that "if the House of Lords is left as it is, a conflict, sooner or later, with a Socialist Government is inevitable; that if it is reformed by the Conservative Party, a chamber would result entirely unacceptable to the Left; and that if it is reformed by the Labour Party,

Causes of dissatisfaction with the House of Lords

Problem of the House of Lords

the character of the new chamber would be entirely unacceptable to the Right." This is the reason why all schemes of reform propounded from time to time have ended in failure

A Conference on the Reform of the Second Chamber, appointed by the Prime Minister in August 1917, and presided over by Lord Bryce, recommended that the House of Lords was to be a smaller body consisting of 327 members, besides the representatives of Ireland. The House of Commons, grouped according to thirteen regional divisions, was to elect three-fourth of the members, i.e., 246 by secret ballot and proportional representation. The system was to be put in operation by degrees, as no single House of Commons was to choose not more than one-third of this number. The remaining 81 members were to be elected from the whole body of peers by a Joint Standing Committee of the two Houses. Members of both the groups were to be elected for twelve year terms, and in each group one-third of the members were to retire after every four years. As regards the powers of the reconstituted House, it was proposed that when there should be doubt whether a measure was to be regarded as a money bill the question should be settled, not by the Speaker of the House of Commons, but by a Joint Committee on financial bills, consisting of seven members elected by each House for the duration of a Parliament. When the two Houses could not agree on a bill, there should be a "free conference" consisting of twenty members of each House appointed at the beginning of a Parliament and ten members of each House added by the Committee of Selection on the occasion of the reference of any particular bill. The House of Lords was not to have the power of making and overturning ministries or of vetoing money bills. The proposals of the Conference were never voted.

In 1932 Lord Salisbury made certain proposals of reform with a view to create a Second Chamber strong enough to resist Socialism. According to his plan the House of Lords is to consist of some three hundred members, half of whom were to be elected for twelve years by the hereditary peerage and the remaining half nominated by the Government for the same period. The power of the Crown was to be so restricted as not to enable it to create more than twelve new peerages in a single year. A Joint Committee of both Houses under the chairmanship of the Speaker is to decide whether a bill is a finance bill or not. No further reform of the House of Lords was to be undertaken without the consent of the existing House of Lords.

In July, 1934, the Labour Party declared in a pamphlet entitled "For Socialism and Peace—The Labour Party's Pro-

gramme of Action" that "the Labour Party, given a majority would interpret the mandate as conferring upon it the right, particularly if the House of Lords seeks to wreck its essential measures, forthwith to proceed to the abolition of that Chamber." Some members of the Labour Party suggest that the House of Lords should consist of one hundred members, elected by each newly elected House of Commons from lists prepared by its constituent parties in proportion each to its own strength. Such a body would be able to advise, encourage and warn the House of Commons but not to thwart the wishes of the latter.

Plan of  
the Labour  
Party

## V. Composition and Functions of the House of Commons

The House of Commons consists at present of 615 members elected in large single-member constituencies. There are 300 members from counties, of whom 230 represent England, 24 Wales and Monmouthshire, 38 Scotland, 8 North Ireland. The Borough members are 303 in number of whom 255 represent English boroughs, 11 Welsh boroughs, 33 Scottish boroughs and 4 Irish boroughs. The English Universities send 7 members, the Welsh Universities 1, the Scottish Universities 3 and Irish Universities 1, in all there are 12 University representatives. The Act of Representation of People of 1918 extended Parliamentary franchise to all adult male citizens of twenty-one years of age or above who have resided for three months either in the constituency of residence or in a geographically contiguous constituency.

Any resident British subject may vote, no matter in what part of the empire he was born. Women of thirty years of age or over were given the Parliamentary franchise if they were wives of electors or if they were Local Government electors as occupiers of £5 annual value. The Act of 1918, however, did not concede to women mere residential qualification. This defect has been remedied by the Act of 1928, by which women's qualifications for franchise have been placed exactly on the same conditions as those already existing for men. At present two classes of persons may exercise one additional vote. Besides the franchise by virtue of residence for three months, a second vote is possessed (a) by the occupier of land or other premises, worth at least ten pounds a year, for the purposes of business, profession or trade. The two votes, however, must not be cast in the same constituency; (b) the possessor of a University Degree or its equivalent who may cast the additional vote for representative of his university. But no person may exercise both business and university votes. Thus the franchise in England fails to be completely democratic only in that while most voters have only one vote, a few voters

Franchise  
and Voters

possess two. The Parliamentary electorate of Great Britain and Northern Ireland numbered in 1936 almost thirty-two million persons out of a population of forty-six million

The function of the House of Commons is not to govern directly, but to exercise supervision and control over the administration. A numerous body like the House of Commons can not govern, but it can admirably check and guide the Government. <sup>Functions of the House of Commons</sup> "The business of making a Government and providing it," observes Laski, "or refusing to provide it, with the formal authority for carrying on the public business is the pivotal function of the House of Commons upon which all other functions turn." The functions of the House of Commons may be classified under the following heads:—Legislation; Financial policy and management of public revenue, Administrative and executive control; Discussion of abuses and the redress of grievances; the testing and selecting of public men in debate and their appointment to ministerial offices

The most conspicuous function of the House of Commons is law-making. Parliament has devised a system by which no change can take place in the law without a most careful and detailed examination. But the <sup>Law-making function</sup> Cabinet has recently overshadowed the House of Commons in some respects as a law-making organ. There is nothing strange in this. The initiative in legislation should not belong to the House, because a large chamber can not settle which of the large number of problems it shall deal with nor how it shall deal with them. If every member proposes bills and the House takes them up, there will be very little coherence in legislation, nor would the public know whom to blame if anything goes wrong. The House should however, discuss all the measures proposed by the Cabinet fully and freely.

Another function of the House of Commons is to control the raising and spending of money. But this is not a separate function at all. If the House decides that certain types of work are to be undertaken, it must provide <sup>Control over finance</sup> money for carrying on those works. A close scrutiny of the estimates can not, however, be performed by a large body like the House of Commons which is heavily pressed for time. The only thing it can do is to concern itself with the general policy which lies behind the estimates. It can discuss also the problem of Ways and Means in general terms. The Chancellor of the Exchequer, for example, may be warned by the members that he is taxing income or some particular commodity very heavily while letting off unearned increment lightly. But the Chancellor of the Exchequer may or may not accept any change the members might suggest; because he is

made responsible for the financial administration. If he refuses to accept any particular change the House must either give up the suggested change or find out an alternative Government.

The third function of the House is to control the machine by which the country is governed. Every act of the Executive can be challenged, approved or condemned by the House of Commons, and if it is condemned it has to resign or to appeal to the electorate. The House can call attention to abuses and demand redress of public grievances. This is done first by putting questions to ministers. On four days in the week, for forty-five minutes, Ministers answer questions concerning the work of their departments. Questions are asked partly for information and partly to bring abuses to light. They are the best day-to-day check on the work of the Government. The process of questioning makes the Departments of State realize that they are functioning under a close public scrutiny which will continuously test their efficiency and honesty. If the House be dissatisfied with the answer on an important topic, any member may ask permission "to move the adjournment of the House on a matter of urgent public importance." Any member may have printed on the Order paper a notice that he proposes to call attention to some matter of grievance or criticism and to move a resolution. The Leader of the Opposition may ask for a day to propose a formal vote of censure on the Government or on some important policy it has adopted. Lastly, the House of Commons may discuss any suspected delinquencies of a Department while considering its demand for money. The last two methods are really formidable and if the Government be defeated in either case, it is compelled to resign or to hold a fresh election. But on account of the growth of rigid party discipline, few votes of censure are likely to be carried.

The House of Commons is an admirable place for testing men for practical statesmanship. Here politicians of all degrees of capacity are exhibited to the country, "so that when men of ability are wanted they can be found, without anxious search or perilous trial."

## VI. Committees of the House of Commons

The pressure for time in the House of Commons is so great that it cannot do all its work in full meeting. Measures that are to be brought before are threshed out beforehand and their provisions carefully weighed and put into precise language in the Committees of Parliament. The Cabinet itself is an informal Joint Committee of the two

Control  
of the  
Executive

Testing the  
capacity of  
public men

Different  
kinds of  
Committees

Houses There are four kinds of formal Parliamentary Committees:—(1) The Committee of the Whole; (2) Select Committees; (3) Joint Committees and (4) Standing Committees. They are all selected by the Committee of Selection which is nominated at the Conference of the Government and Opposition party leaders at the beginning of each session. The Committee of the Whole is simply the House of Commons itself. But the Chairman of Committees presides over it instead of the Speaker and the rule of the House forbidding a member to speak more than once on the same question does not apply in it. The most important and contentious bills are referred to it. When dealing with these it is called simply the Committee of the Whole. But when engaged upon appropriations (granting of Supplies to be spent for particular objects specified by Parliament) it is called the Committee of the Whole on Supply. When it is engaged in raising the revenue it is called the Committee of Ways and Means; when reviewing the accounts of India, it is named from that subject

Different  
kinds of  
Committees

Select Committees are of two kinds—the Sessional Committees which are appointed regularly every year and other Select Committees which are created to consider some particular matter. Members of the Select Committees are generally appointed by the Committee of Selection, which is chosen from all the parties by the House itself at the beginning of the session. Besides the Committee of Selection, the Committee of Public Accounts, the Committee on the kitchen and refreshment rooms are the other seasonal Committees. The function of a Select Committee is simply to collect evidence and examine witnesses and to present these together with the report of their conclusions to the House of Commons. Select Committees expire when they have made a report upon the special matters entrusted to their charge

Function of  
Select  
Committees

Joint Select Committees from the Lords and Commons are appointed chiefly for considering Private Bills and for settling the differences between the two bodies amicably. Each Private Bill Committee consists of four persons

Joint Select  
Committees

There are six Standing Committees whose deliberations take the place of debate in the Committee of the Whole. Bills which pass through the 'second reading' are referred either to the Committees of the Whole or one of the six Standing Committees. Standing Committees once appointed last throughout the session and consider all bills of non-contentious nature.

Standing  
Committees

## VII. Speaker of the House of Commons

The Speaker is the President of the House of Commons. In the early days of Parliament, the Speaker used to bear the petitions of the Commons and urge them upon the attention of the monarch. He was called the Speaker, not because he delivered speeches in the House of Commons, but because he was the spokesman of the House in its dealings with the Crown. Now-a-days the Speaker does not take part in any debate.

The Speaker is, in theory, elected by the House itself; but in practice the Prime Minister selects a suitable person after making certain that the selection will be acceptable to the House. He is formally proposed by a member at the beginning of each Parliament, seconded by another member belonging to the opposite party; and the other members 'call him to the chair' by acclamation. Once elected to the Chair, the Speaker gives up his allegiance to the party to which he formerly belonged. Not only does he conduct the business of the House impartially without any party bias, but also keeps himself scrupulously aloof from even political clubs and party newspapers. He is invariably re-elected to the House without any contest. No political party sets up any candidate to contest his seat. He is also unanimously re-elected to Speakership so long as he is willing to serve in that capacity. He has a salary of £5000 a year. A wing of the Palace of Westminster is assigned to him as his official residence. On retirement he is usually promoted to peerage and is allowed to draw a liberal pension. An Order-in-Council fixes his precedence after the Lord President of the Council, that is, seventh in the realm.

In the sixteenth century the person best suited to the position of Speaker was described as "a man big and comely, stately and well-spoken, his voice great, his carriage majestic, his nature haughty, and his purse plentiful." Now-a-days emphasis is laid on mental rather than on physical qualifications. The Speaker must be of judicious temperament, vigilant, unperturbable and tactful in handling men and affairs.

The Speaker has to discharge important functions. He guides and controls the deliberations of the House, decides points of order and announces the result of votings. He interprets the rules of the House authoritatively and gives rulings in controversial matters regarding procedure of business. His rulings cannot be called in question. He has the right to suspend any member from the House if he finds him behaving in a disorderly way. He can adjourn the House in case of a

serious disorder prevailing in the House. The Speaker does not allow questions to be asked where the central departments do not owe responsibility to Parliament. He has the right, according to a standing order of 1919 to pick out for discussion those particular amendments which he deems most appropriate from among the amendments proposed for any motion, schedule or clause of a bill. As he can, thus, hop like a Kangaroo from amendment to amendment, this form of closure of debate is known as "Kangaroo". The Speaker prevents direct criticism of the King in the House. By the Parliament Act of 1911 he has been made the sole authority to determine whether a particular measure is or is not to be considered a Money Bill. Prof. Keith suggests that if a grave foreign or internal crisis occurs when Parliament is not in session, the Speaker should be authorised to summon the Commons on the request, not merely of the Prime Minister, but also on that of the leader of the Opposition or of a specified number, say, of 100 members.

### VIII. Privileges of the House of Commons

The House of Commons claims some privileges formally and others informally. Of the formal privileges there are three in number. First, the Commons has collective access to the person of the sovereign and they claim the most favourable construction of their proceedings. Secondly, the members of the House of Commons enjoy freedom from arrest during the session of Parliament and for a period of forty days before and after the session. But this privilege does not extend to cases where a member is charged with indictable offences and for contempt of court.

Thirdly, the members enjoy the privilege of freedom of speech. If any member attacks another in unparliamentary language, the House itself may censure, suspend or expel him. On the famous case of *Stockdale vs. Hansard* it was decided that any papers published by order of either House of Parliament are absolutely privileged even if the speeches reported are defamatory. But if a Private member reprints a defamatory speech he will be liable to prosecution.

Privileges not formally claimed but as a rule enjoyed by the House of Commons include the right to regulate the filling of vacancies in the House. Up to 1868 the House itself used to decide all election petitions. But now a tribunal of two Judges decide such cases. The House, however, has retained the right of taking notice of any legal disqualification, such as conviction for felony. In India the executive government regulates such disqualifications.



The House of Commons regulates its own affairs, exempt from judicial intervention save in the case of crime. The House enjoys also the privilege of punishing disrespect to its members or itself, interference with its procedure or its officers, or with witnesses who have given, or are to give, evidence before it. The House has power to admonish, reprimand, or commit offenders to prison for the duration of the session and may fine, though the power is disused.

Maintains  
order and  
discipline

## IX. Duties and responsibilities of a Member of Parliament

A member of the Commons is elected by local constituency, to which he has special duties. But he is not a mere delegate or mouthpiece of his constituents. He is responsible for the interests of the country at large and not simply for the interests of the locality from which he is elected. He is influenced by the wishes of his constituents and by the action of his party, but he does not surrender the right of independent judgment. Burke in his classical Bristol speech of 1774 said :—"It ought to be the happiness and glory of a representative to live in the strictest union, the closest correspondence and the most unreserved communication with his constituents. Their wishes ought to have great force with him ; their opinion high respect , their business unremitted attention.... your representative owes you not his industry only but his judgment ; and he betrays instead of serving you, if he sacrifices it to your opinion "

A member is  
not a mere  
agent

Up to the eighteenth century it was sometimes the custom for the constituencies to send instructions to their members.

When the number of voters increased as the effect of the passing of the First Reform Bill, it was no longer possible to issue precise instructions to the members. The Redistribution Act of 1885 weakened the old corporate character of constituencies and strengthened the view that a member represents the country as a whole. At present a member sits in the House of Commons less as the representative of a particular locality than as a member of the political party which had obtained a majority of votes in that locality.

If in earlier times a member had been an agent of his constituents, now he has become an agent of the party to which he owes allegiance. He might not hold exactly the same opinion as the leader of his party, yet he would generally vote with them. The fear of defeat of the party and consequent fear of dissolution of Parliament act as checks on the free action of a member. If after his election a member should change his party, he could not be

His relation  
with his  
constituency

required to resign his seat. But the member who changes his party, generally offers to resign his seat and submit himself for re-election in order to ascertain whether his action meets with approval of the majority of his constituents. A member, at present, is expected to ask questions in the House about matters which affect the interest of his constituents. He communicates by post the ministerial reply to these questions. In discussions about private bills, he upholds the interests of his constituency.

## X. Procedure of Enacting Law

There are three kinds of bills which are discussed and considered by Parliament. These are Public or Ordinary Bills, Money Bills and Private Bills. There are different kinds of procedure for different classes of bills. Public or Ordinary bills are those which deal with matters of general importance and which when enacted, alter the general law of the country. Any member of Parliament can introduce an ordinary bill. Some bills are introduced by members of the government, while others are introduced by private members. Though there is no difference in procedure between a government bill and a private member's bill, yet the chances of the latter being passed into law are very little. An ordinary bill may be introduced in three ways :—(1) A motion for leave to bring in a bill with a speech explaining the object of the bill may be made. It is followed by a debate and vote. Important government bills are introduced in this way. (2) A shorter procedure has been adopted by a standing order of 1888 by which a motion may be made to bring in a bill. Ten minutes are allowed for the mover and his opponent to speak, after which the Speaker may put the question. After an order to bring in a bill has been obtained in either of these ways, the question that the bill be read first time is voted upon without amendment or debate. (3) The shortest process has been established in 1902. It permits a member to present a bill at once which is then read for the first time without any order or vote of the House. The second reading is a formal debate on the principle of the bill, which may last more than one day and in which set speeches are made by the most important ministers and members of the House. No word or line of the bill is altered in such a debate. Those who oppose the bill and want to kill it propose "that this bill be read a second time this day six months," or some other time at which the House is expected not to be in session. If such an amendment is passed, the bill is defeated and no further step is taken with regard to it.

Procedure  
of enacting  
Public  
Bills

After the second reading the bill generally goes either to the Committee of the whole House or to any of the six Standing Committees. The Committee goes through the bill, clause by clause, discussing any amendment that may be proposed and determining as to each clause as to how it should be amended. It takes weeks or even months to consider a bill in the Committee.

When the discussion is finished and the whole bill is gone through, the Chairman of the Committee makes a single report to the Speaker merely stating whether the bill has been amended or not. The House discusses and determines whether any further alterations or additions should be made.

The final stage in the House of Commons is the third reading. At this stage only formal or verbal alterations are allowed. The bill must be accepted or rejected as it stands. The House considers the bill as a whole and determines whether in its opinion the measure ought or ought not to become a law.

The third reading having been approved of, it goes to the House of Lords to pass through similar stages in a similar process.

The House of Lords may reject an ordinary bill or introduce into it substantial amendments. If the House of Commons refuses to accept these amendments, or if it is rejected, the bill is dead for that session. But if the House of Commons wishes it to become law and passes it twice again through all the stages in course of two years, it goes to the King for his approval. When a bill receives the Royal assent, it becomes law.

Private bills are those which deal with matters in which a particular locality or a particular person or a body of persons is interested, e.g. bills for acquiring lands for railways or tramways, etc. "The object of a private bill is, not to alter the general law of the country, but to alter the law relating to some particular locality, or to confer rights on or relieve from liability some particular person or persons" (Ilbert). Notices of the object of a private bill are given for information to all whose interests would be affected by it, before the introduction of the bill. In many cases plans and estimates of expenditures proposed have to be deposited before particular dates. Special officers see whether these preliminaries are fulfilled or not. If they are satisfied the bill

may be presented and read first time. If there is no question of general principle the bill is allowed to be read a second time. Then it is referred to a small committee, usually of four members. The proceedings of the committee are of a judicial nature, because they hear the arguments of counsel, take evidence from witnesses and consider reports from public departments. They may make amendments

Procedure  
in the  
Second  
Chamber

Procedure  
of enactin  
Private  
bills

Procedure

when a private bill has been reported by a committee, the report is considered by the House and the bill is read a third time and passed as in the case of a public bill.

## XI. Money Bills

A Money Bill is one which authorises the expenses of the year or imposes taxation to meet the expenses. But neither all the Governmental expenses nor all the taxes are voted annually. The management and service of the National Debt, the grants to Northern Ireland, the King's Civil List and other grants to the Royal Family, and the salaries of Judges, the Comptroller and the Auditor-General, the Leader of the Opposition and the members of the Unemployment Assistance Board are authorised by Parliament by permanent statutes. These items of expenditure do not appear in the annual Estimates. Similarly, major portion of revenue derived from taxation like Death duties, Stamp duties, Customs, Excise are imposed by permanent statutes and do not need annual sanction. The financial action of Parliament is governed by three principles, namely (i) "It has become a fundamental principle of sound public finance with the English Government that all taxations and expenditures are at first placed before the Commons and when approved of by this House consisting of the representatives of the people, are enforced for the benefit of the country." (ii) The House of Commons can not vote money for any purpose whatsoever nor can impose a tax except at the demand and upon the responsibility of Ministers of the Crown. (iii) The House of Commons has got unshared prerogative of controlling finance. The Parliament Act of 1911 provides that money bills passed by the House of Commons will become law one month after such passage, even if the Lords withhold their consent.

The preliminary step to the voting of public expenditure is the preparation of Estimates. In the autumn of every year the Departments prepare their Estimates of the coming year in a prescribed form giving all necessary details. If a particular Department wishes to spend more than what was sanctioned last year, it must obtain the sanction of the Treasury before inserting it in the Estimate. The Estimates are then closely examined and revised by the Treasury. But the Treasury has no control over Estimates where a Vote of Credit is sought for emergency expenditure such as the conduct of a war. The Estimates sanctioned by the Treasury are then considered by the Financial Secretary in their relation to the probable revenue of the coming year. The Chancellor of the Exchequer may wish to cut down general expenditure and ask the Departments to reduce

their expenditure. If the Ministers concerned do not agree to his proposal, the matter is referred to the Cabinet, where it is definitely settled with the advice of the Prime Minister. Finally, the Estimates are laid before the House of Commons in five volumes dealing respectively with the Army, the Navy, the Air Force, the three Revenue Departments (the Board of Inland Revenue, the Board of Customs and Excise and the Post Office) and the Civil Estimates. Each of these Estimates is divided into votes which are again sub-divided into sub-heads and items.

The House of Commons has to see that every branch of administration is carried on efficiently at the least possible cost ; it has to provide the money required for all these purposes and to decide whether new taxes should be imposed or old ones reduced ; further, it has to review the whole financial position of the country. The House of Commons resolves itself into Committees of the Whole House to grant money and raise taxes. When it considers the Estimates and decides how much is to be spent on particular votes, sub-heads and items, it is called the Committee of Supply. When the Committee of the Whole House considers how money is to be found, it is called the Committee of Ways and Means. The Chairman of Committees, instead of the Speaker presides over both these Committees. Soon after the 31st of March, every year, the Chancellor of the Exchequer, makes his Budget Statement in the Committee of Ways and Means. In this Statement he reviews the income and expenditure of the last year, anticipates the probable income and expenditure of the next year, and proposes his scheme of taxation.

The Estimates of the Army and Navy are presented to the Committee of Supply by the Secretary of State for War and the First Lord of Admiralty respectively. The Civil Estimates are submitted by the Financial Secretary to the Treasury. Not more than twenty days are allotted to Supply before 5th August, though an extra three days may also be provided for discussions on the Estimates. The Estimates are discussed Vote by Vote. Nearly every Vote is made the opportunity of discussion of some general principles. The usual mode of showing disapproval of the policy of a Department is to propose that the salary of the minister in charge of that Department be reduced by £100. Such a proposal is tantamount to a vote of no confidence. "There has not been", reported a Select Committee on National Expenditure in 1918, "a single instance in the last 25 years when the House of Commons by its own direct action, has reduced, on financial grounds, any estimate submitted to it." The Committee of Supply votes a sum of money 'not exceeding' so many pounds, and this is afterwards

Committees  
of the whole  
House

The  
procedure of  
passing the  
Appropriation  
Act

converted in the ordinary procedure of law-making of the House into a Vote. Finally all the Votes together are gathered annually into the Appropriation Act, which defines in minute detail how much money may be spent by each Department for this purpose or that

The business of the Committee of Ways and Means begins a little later than that of the Committee of Supply. It passes resolutions reimposing existing taxes at the <sup>The annual Finance Act</sup> rates newly agreed upon, remitting taxes if necessary, and providing such new or additional revenues as the needs of the situation require. The Income tax, Tea duty, Customs duty on tobacco, beer and spirits and the corresponding Excise duty on beer and spirits are revised every year with a view to balancing the budget. The resolutions of the Committee are formally reported to the House of Commons which passes in the usual procedure of legislating Public Bills the annual Finance Act, defining the taxes for the year.

The procedure of passing the Appropriation Act and the Finance Act is so very lengthy that they can not be passed before the end of August. The Committee of Supply, therefore, has to pass resolutions authorising the <sup>Comptroller and Auditor-General</sup> Treasury to spend a limited amount under every Vote. These resolutions are embodied on "Votes on Account." All sums collected under the annual Finance Act and the more permanent acts are paid into the Exchequer account of the Bank of England called the Consolidated Fund. The Comptroller and Auditor-General who is independent of the Government like a Judge, sees that not a penny is drawn from the Consolidated Fund by any Department for any purpose not authorised by the Appropriation Act. This high officer makes a report to the House of Commons showing that the money voted for has been spent exactly as the House desired.

## XII. Extent of Parliamentary Control over Finance

In theory the House of Commons is the guardian of national finance and exercises its authority over both expenditure and taxation. But in practice the control of the House is rendered largely ineffective on account of the shortage of time at the disposal of the House, the lack of qualification of members to deal with highly technical questions, the want of proper organisation for dealing with such questions and the antiquated form in which the Estimates and Accounts are presented. But it must be admitted that the House of Commons does really control the taxes which are imposed on the country. The Baldwin Cabinet 1928 proposed a tax on light oils, which would have increased

the cost of kerosene in poor men's cottages. Though the Government possessed a big majority in the House, yet it had to withdraw the tax on account of vehement opposition to it. Mr Chamberlain had to abandon the original form of his National Defence Contribution. These facts show that there are limits beyond which the Cabinet dare not push its majority for fear of losing its influence.

The control over expenditure is, however, much less real. Examination and discussion of Estimates of a score of Departments, some of which spend tens of millions of pounds, cannot be done in the twenty days allotted for this purpose. In the accounts, no distinction is made between what is properly due to the year's working and what is really due to other years. Nor is there any distinction between income account and capital account, between 'dead-weight' debt and productive debt. So it becomes almost impossible to form any clear idea as to the exact financial position of the Government. The Estimates of one Department do not show the cost of services rendered to it by other Departments. The defects in Parliamentary control of finance have been described by the Select Committee on National Expenditure in the following words: "The time at its disposal is closely restricted. It cannot examine witnesses. It has no information before it but the bulky volumes of the Estimates themselves, the answers of a Minister to questions addressed to him in debate, and such facts as some Private members may happen to be in a position to impart. A body so large, so limited in its time, so ill-equipped for inquiry, would be a very imperfect instrument for the control of expenditure even if the discussions in Committee of Supply were devoted entirely to that end. But those discussions afford the chief, sometimes the only opportunity in the course of the year for the debate of grievances and of many questions of policy. In the competition for time, those matters of greater interest and often of greater importance, usually take precedence, and questions of finance are crowded out. And even if all these obstacles are overcome, and some rare occasion arises on which the House of Commons discovers and debates a case where a reduction in an Estimate appears desirable, and would be disposed to insist upon its view, the present practice, which regards almost every vote of the House as a vote, not only on the merits of the question, but for or against the Government of the day, renders independence of action impossible." The House of Commons exercises control over finance only indirectly in two ways. First, it controls the very existence of the Cabinet which proposes the money bills and secondly, the annual reports of the Comptroller and Auditor-General go to a Committee of the House for review.

### XIII. Judicial System of Great Britain

The Judicial System of Great Britain, as it stands to-day, was reconstituted by the Judicature Act of 1873-76. It is based upon a division between Criminal and Civil cases, and between courts in London and courts in the County.

Minor cases are dealt with in the Courts of Summary Jurisdiction, which are held in rural areas by Justices of Peace and in urban areas by a Magistrate. The Justice of Peace is a country gentleman, appointed by the Lord Chancellor at his discretion and serving without pay. Two Justices of Peace constitute the Court of Petty Sessions and all the Justices of Peace of the County form the Quarter Sessions. A single Justice may convict for minor offences, he or a Petty Sessions may bind over a person accused of a serious offence to either the next Assize or the next meeting of the Quarter Sessions. An Act of 1938 makes it possible for a County to employ a paid professional Magistrate in place of the Quarter Sessions. The Court of Quarter Sessions has both original and appellate jurisdiction. The original cases are heard with the help of Jury. Appeals from the decisions of Justices of Peace and the Courts of Petty Sessions are decided without Jury. From these courts appeals lie to the King's Bench Division of the High Court or to the Court of Criminal Appeal according to the nature of the case.

The Assizes are terms of court held by Judges of the King's Bench Division of the High Court in London, who make the rounds of County towns and provincial centres, hearing criminal cases. England and Wales are divided into seven circuits, each containing several Counties. Serious criminal cases are tried with the help of a Jury. The King's Bench Division acts as a Court of Assize for London and Middlesex.

Appeal from Assizes may be taken on points of law in any criminal case or under certain circumstances on the question of fact to the Court of Criminal Appeal, which consists usually of three Judges of the King's Bench Division of the High Court. The procedure in this court is simple and inexpensive and it represents English Justice at its very best. Appeals from this court may be carried to the House of Lords with the permission of the Attorney-General. But the permission is rarely given to appeal a criminal case, on a point of law, to the House of Lords.

Original jurisdiction in Civil cases and cases in Equity in England belongs to the so-called County Courts, whose jurisdiction is confined to a district, which is smaller than a County. There are one hundred such courts in England. Such a court can try cases involving sums up to £100 or property worth up to £500. A County Court is presided over by a Judge appointed



by the Lord Chancellor from among barristers of at least seven years' standing. From the County Courts lies an appeal to the High Court in London.

The Supreme Court of Judicature consists of two chambers—the lower chamber being called the High Court, and the upper chamber, the Court of Appeals. The High Court consists of three divisions—the King's Bench Division, the Chancery Division and the Division of Probate, Divorce and Admiralty. The King's Bench Division is composed of the Lord Chief Justice and fifteen other Judges appointed by the Crown on the Lord Chancellor's advice. It has jurisdiction over all classes of Common Law actions, in Civil and Criminal cases. It exercises supervisory power over inferior courts and judicial bodies. The Chancery Division consists of the Lord Chancellor and six Judges. It hears appeals from County Courts in cases relating to equity and bankruptcy as well as cases arising out of partnership, trust and mortgage. The Probate, Divorce and Admiralty Division is composed of the President and two Judges. From all the divisions an appeal lies to the Court of Appeals, consisting of five Lords Justices of Appeal, the Presidents of the three Divisions of High Court, the Master of Rolls, all ex-Lord Chancellors, the Lord Chief Justice and the present Lord Chancellor. A final appeal in cases of Civil law or Equity may sometimes be taken to the House of Lords.

The House of Lords is the final court of appeal for Great Britain and Northern Ireland in all cases of law and equity. Seven "law lords" are appointed life members of the House of Lords to serve as judicial members. Appeals in ecclesiastical cases and from the other parts of the Empire are tried by the Judicial Committee of the Privy Council. It is composed of the judicial members of the House of Lords together with additional persons learned in the law of the community from which the appeal comes.

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## CHAPTER XXV

### ENGLISH CONSTITUTION ( Contd. )

#### MODERN TRENDS IN THE ENGLISH CONSTITUTION

##### I. "The Decline of Parliament"

In the nineteenth century the functions of Government were limited, the number of electors was small, party discipline and organization were loose and in consequence of these, members of Parliament could exercise effective control over every department of Government. The Duke of Devonshire who had served in the Cabinets of Palmerston and Russell said in 1893 that "Parliament makes and unmakes ministries, it revises their actions. Ministers make peace and war, but they do so at pain of instant dismissal by Parliament from office ; and in affairs of internal administration the power of Parliament is equally direct. It can dismiss a Ministry if it is too extravagant or too economical ; it can dismiss a Ministry because its Government is too stringent or too lax. It does actually and practically in every way govern England, Scotland and Ireland." But now-a-days one Chamber of Parliament, the House of Lords, has been reduced to a position of humiliating importance by the Parliament Act of 1911 and by the wholesale creations of peers who have neither the capacity nor the willingness to devote their time to public affairs and whose sole qualification to the dignity has been the handsome contribution to party organisations. The House of Commons, in the opinion of Mr. Ramsay Muir, has shown its "increasing incapacity to perform its work, partly through excessive pressure of business, partly because of Cabinet dictatorship, partly owing to the faults of procedure and the bewildering way in which the national accounts are presented ; the result is that the House of Commons has no real control over the enormous and growing power of bureaucracy, or over the vast but inefficiently wielded powers of the Cabinet." He comes to the conclusion that the House of Commons has become merely a registering body.

Much of this complaint with regard to the decline in the power of Parliament is with reference to the decline in the importance of Private members, that is, members of Parliament who are not in the ministry. Private members are entitled to propose Bills, but the time allotted to them is only thirty parts of the session out of two hundred in a normal year. Many members are eager to introduce bills, but the time at the disposal of the House is extremely

Changed  
position of  
Parliament

Position of  
Private  
members

limited. So a selection is made by lot among the members wishing to introduce bills. Only the first few names on the list have any chance of having their bills discussed. The discussion is taken up on Fridays, when most of the members are eager to go out to enjoy the week-end. Towards the end of the session even the Fridays are annexed by the Government for its own work. No Private member's Bill has any chance of success without the support of the Government, but such support is seldom given. A Private member, thus, can hardly expect to do more than call attention to his proposals. He can criticise the legislative proposals of the Cabinet, but the time at the disposal of the House is, again, limited for such criticism. 'Closure,' 'Guillotine' and other devices are applied for bringing discussions to an end. It has already been shown that the time allotted for discussing the Estimates is utterly inadequate for a close scrutiny of expenditure by the House. Over and above these difficulties, the Private member has to vote according to the dictates of the Party Whips. If he does not do so he will not be adopted again as candidate by his Party. The salary of members of Parliament has been raised from £400 to £600 in 1937. Those who depend in any measure on this salary for their living cannot afford to displease the Party, because with the extension of franchise it has become well-nigh impossible for a candidate to become successful without the support of a party. Hence the Private member has become a mere unit in a division-list, with little effective sphere of independent action of his own.

This view of the position of a Private member is supported by Mr. McKinnon Wood, an ex-Cabinet minister, who says that he would much rather be a member of the London County Council than a Private member of Parliament. Fewer youngmen of promise now devote their talents to political career than before, because they feel that there is little scope for showing their ability as Private member of the House. Very little seriousness is in evidence among the Private members with regard to discussions in the House of Commons. Mr Ramsay Muir draws a pen-picture of the House of Commons in an ordinary evening, when visitors will see "forty or fifty men and one or two women sprawling here and there on the benches, listening to—no, not as a rule listening to, but enduring—a speech from one of their members, while waiting for an opportunity to make speeches of their own. There will be other members in the House, some in the lobbies writing letters, others in the library hunting out references for a speech or preparing an article, others in the smoke-rooms chatting or playing chess, others in the dining-rooms or on the terrace entertaining visitors, none of them paying any attention

Lack of  
interest in  
the discus-  
sions of  
Parliament

to the debate, but all waiting to record their votes without having heard the arguments. There will be others in clubs within call, or dining with friends, or at the theatre, they will come in towards the end of the evening, ready to take part in divisions, having been told by their Whips that the discussion will be carried on until such an hour, when a division will take place, sometimes the discussion has to be artificially prolonged, in order to fulfil these promises."

There is no denying of the fact that the position of Private members has declined in importance. But neither Prof. Finner nor Prof. Laski find any cause for lamenting over this. According to Finner, Private members "have little to add to discussion, because neither special training nor formal profession fits them for it. Nor is there anything so special about the locality they represent that its voice ought to be heard. When it is, indeed, the party caucus knows it, and promptly includes it in the ingredients of the party's policy. It is enough if the opportunity is allowed to men of exceptional talent and character, to denounce the misdeeds of Government and Opposition when the occasion demands." Some such opportunity is already given by the right of Private members to ventilate grievances, to extract information, to criticise administrative process, and to raise the discussion of large principles which test the movement of public opinion. More opportunities can be given by changing the procedure of business in the House.

Justification  
of the  
present  
situation

The spread of general education, facilities of communication, and the awakening of public spirit of the electorate have also contributed to the transfer of power from Parliament to the electorate. In the present century a principle has been established that no far-reaching changes in public affairs should be made until the voters have had a chance to pass judgment upon the proposals at a general election. In his Ministry of 1924-29 Mr. Baldwin declined to introduce Protection because he had not asked for any mandate from the electorate. The Ministry of 1931 asked for a wide mandate, and it is quite possible to hold that they were justified in introducing wholesale Protection on the strength of it. The electors vote for a programme put forward by a party and their representatives are expected to give their support to the Bills proposed by the leaders of the party. Thus Parliament has become the organ of registration for the Cabinet.

Mandate  
of the  
electorate

## II. Parliament in War-time

Nothing testifies more to the vitality of democratic institutions in England than the active part played by Parliament in the

government of the country during the present war. The danger of bombing from air and the need of leaving the ministers free to prosecute the war make it necessary to hold fewer and shorter sittings than in peace-time. A writer in a recent issue of 'the Economist' has described the outward changes due to war in the following words: "Away from Westminster Parliament lacks its peace-time limelight of party politics. By-elections are not contested by the major political groups. Local propaganda is confined to keeping the parties' identity and ideals alive. There will be no general elections while the war lasts. All this does not involve the abnegation of Parliament."

Parliament has three functions in wartime. Its first function is to secure that the government which commands the support of a Parliamentary majority has also the confidence of the people. Cabinets and Ministers can be changed even though the acid test of elections is withheld. The relative strength of parties has not changed perceptibly since the war broke out. But the events of May 1940, when Mr. Chamberlain gave way to Mr. Churchill represented a radical realignment in English politics and they mirrored a sweeping and dramatic change in public opinion. The question at issue was the conduct of the war, and the Members of Parliament, regardless of their party affiliations, supported the change in leadership. Thus the Parliament has been successful in interpreting the will of the people correctly and installing a government which command the confidence of the people.

The second function of Parliament is to see that the government is efficient. It has freely asked questions and criticised the government upon the conduct of the war in all its branches and kept watch over both the liberty and security of the nation. It is said that every attempt to curb democratic curiosity and every effort to give *carte blanche* to the executive in matters vitally affecting civilian rights, have been resisted.

The third function of Parliament is to give the most complete backing to a government which proves both efficient and popular. In peace-time the ordinary private member plays a rather insignificant part in shaping the policy of government. He has, indeed, frequent opportunities for criticism at question time, on adjournment motions and in general debate. But these are largely desultory and fortuitous opportunities in times of crisis. The members, at such a time, can render and are rendering very useful service in committees and in settling differences about policy. The Select Committee on National Expenditure examines the economical side of departmental activities through a number of sub-committees. The members of the

Select Committee have already drawn attention to a large number of cases where money has been wasted because of faulty planning and short-sighted policy in the Ministries of Supply, Shipping and Food. "Their ostensible aim is to secure economy, their actual aim to promote efficiency, and it would not be incompatible with the exclusive responsibility of the Cabinet for policy, for more members to play a part more continuously in this scrutiny of official acts. Moreover, the defunct duty of the Commons to pass judgment upon expenditure, a duty which has fallen into disuse because of the congestion of parliamentary procedure, would thereby be restored ... .. The second war time development is the practice of consulting interested representative members to settle differences about policy. Most notably it was used early in the war to revise controversial Defence Regulations, and more recently it was employed in the discussion about the powers of emergency courts. The basis of popular government is precisely consultation with groups and individuals with strong views and relevant experience, and if the scrutiny of expenditure may help the Commons to fulfil their role of ensuring that government is efficient, frequent informal consultation can help them to carry out their other task of seeing that it is popular as well.

### III. "Cabinet Dictatorship"

In theory, the House of Commons controls the Cabinet. The Cabinet must resign or dissolve Parliament, if it fails to retain the confidence of the House. The House can make the army and air force illegal by refusing to pass the annual Army and Air Force Bill. It can make the levying of income-tax and surtax unlawful by failing to pass the Finance Bill; it can prevent the expenditure of money on the Supply Services by failing to pass the Appropriation Bill. But "the refusal to pass the Mutiny Act or grant supplies," says Anson, "has never in fact been applied." The rigours of party discipline, and activities of the Party Whips make it difficult for a member belonging to the majority party forming the Government to vote against the Bills proposed by the Government. The Opposition, which is usually in a minority, may propose a vote of censure but few votes of censure are likely to be carried. No Government with a majority has been overthrown by the House of Commons since 1895. A majority Government can be defeated only by reason of a party split. So long as the party supports the Cabinet, it is the Cabinet which controls the House, and not the House that controls the Government.

Relation  
between  
the Cabinet  
and the  
Commons  
in theory  
and practice

Dr. A. B. Keith makes the following highly pertinent observations regarding the tendency of subordinating the Commons

to the Cabinet "The extension of the franchise and the redistribution of seats into one-member constituencies in 1885 have strengthened the electorate or the party organisations, and diminished the independence of the Commons ; the increase of electioneering costs, with the extension of the franchise in 1918, and the payment of members, have conspired to render members extremely sensitive to the threat of dissolution, and have compelled them in the main to follow loyally the leaders whose party aims they have bound themselves to support. The Commons thus has, on the one hand, become more sensitive to the control of the electors ; on the other, it has ceased to control Cabinets, and it dare not reject or substantially amend government measures. The adoption of rules of procedure, which more and more abstract the rights of Private members to secure discussions or legislation, and the absorption of the time of the Commons by the Government have contributed to the subordination of the Commons to the Cabinet." It has already been shown that the power to initiate and shape important laws is in practice confined to the members of the Cabinet. Bills proposed by the Cabinet can not usually even be amended without the consent of ministers. In recent years amendments carried against the opposition of the Government have been extremely rare. Coherence and consistency in legislation demand the rejection of such amendments.

The House of Commons, however, criticises the conduct of the Cabinet freely and frequently. The House has the following opportunities for doing so : (a) An amendment may be put down to the Address of the King delivered by the Prime Minister at the beginning of each session ; (b) The Opposition may criticise the Government during the twenty or twenty-three days which are devoted to Supply, in matters relating to the Votes put down, (c) on four occasions, when the House goes into committee to consider the three sets of defence and the Civil Estimates, motions may be brought forward if the ballot favours the mover, (d) a Private member can rise to move the adjournment of the House "for the purpose of discussing a definite matter of urgent public importance." If forty members rise in their places to support him, he can bring forward his motion ; (e) the leader of the Opposition can at any time claim to move a vote of want of confidence. In such a case the judgment of the House is passed not upon any one act or question of policy but distinctly upon the record of the ministry as a whole. But the party discipline is so strong now-a-days that it is very difficult to turn a Cabinet out of office, unless the party in power breaks up on some vital questions like that of Home Rule or Free Trade. "It is very difficult," says Sir Sidney Low, "to bring a Government to account for

Causes of  
subordina-  
tion of the  
Commons

Opportuni-  
ties for  
criticising  
the Cabinet

anything done in its ministerial work " The real check upon a gross misuse of power is the salutary fear of public opinion.

But it would be going too far to say that a Government in possession of a majority forms a temporary dictatorship. The authority of the Government is derived from the confidence of the majority, that majority, again, rests upon popular support. If the Cabinet displays excessive secrecy, or grave discourtesy, or makes a continuous threat of resignation or dissolution or shows inability to quell an angry public opinion outside, it is likely to raise revolt in the rank and file of its supporters. The Prime Minister has to say with Carlyle, "I am their leader, therefore I must follow them " He and his colleagues in the Cabinet must try to learn the direction of their supporters' minds. If they find that they are not being followed, they must alter the direction of their policy.

There is no dictatorship of the Cabinet

In 1931, the Labour Party had 288 members, Conservatives 260 members, the Liberal party 59 seats and others 8 seats in the House of Commons. Mr. Ramsay MacDonald, thus, was the leader of the strongest party in the House of Commons. But when he and his two most important colleagues, Mr. Snowden and Mr. Thomas proposed a cut in unemployment benefit, the trades-union authorities rejected the proposal, and a section of the Cabinet, led by Mr. Henderson revolted against the authority of Mr. Ramsay MacDonald. There was a split in the Labour Party and Mr. Ramsay MacDonald had to resign as the head of the Labour Government. There are many other recent cases to show that even when the Government commands a majority, it has to give up its policy or measures in the face of rising discontent in the country. In 1934, the National Government under Mr. MacDonald had an unprecedented majority in the House of Commons, yet it had to give way on the Unemployment Assistance Regulations. Again, the Government had to accept substantial amendments in its "Incitement to Disaffection Bill," because the Opposition within the House of Commons made common cause with the opposition among the general public. In December, 1935, Sir Samuel Hoare, the then British Foreign Secretary, and M. Laval, the then Prime Minister of France virtually agreed to sacrifice Abyssinia to Italy. Their proposal was communicated to the British Prime Minister by messenger, and was presented to the Cabinet. In the meantime it was published in Paris newspapers and reproduced in London papers. There was an immediate and spontaneous outcry against this proposal. The Cabinet had to repudiate the action of Sir Samuel Hoare, who resigned with the observation - "I have not got the confidence of the great body of opinion in the country, and I feel

Examples of Cabinet's reaction to public opinion



that it is essential for the Foreign Secretary, more than any other Minister in the country, to have behind him the general approval of his fellow-countrymen " In 1937, Mr Chamberlain had to give way on his National Defence Contribution Scheme In conclusion, it may be stated that the Cabinet is not oblivious of public opinion and does seldom act in a high-handed manner. "On the whole, with the exceptions here and there noticed, the British Cabinet system offers quick, vigorous, thoughtful and responsible leadership"; observes Dr. Finner, "it is controlled, but not stultified; threatened, but not executed; questioned, but not mistrusted; politically partisan, but not personally malicious; restrained as much by the spirit of responsible power as by its institutions and sanctions; and Janus-like, it looks, at once to the People and to the Senate."

#### IV. Tendency towards Bureaucratic Government

The sphere of Governmental activity has increased enormously since the War of 1914-18 The responsibility of providing for the housing of the people on an adequate standard, of demolishing slums, planning new areas, and re-planning old ones, of carrying out the complex activities in connection with the National Health Insurance scheme, of controlling the system of transport, of finding employment for labourers, of fixing wages in unorganised trades, of providing machinery for industrial conciliation and arbitration and host of other duties was taken up by the Government. Ministers have got neither the time nor the capacity to look into the details of the vast mass of administrative work. Consequently much of these has to be left to the discretion of the Civil Service. Parliament has no time to make laws relating to the details of the administration of these departments; nor has it time and opportunity to discuss minutely the Estimates prepared by the Civil Service to finance the working of these departments. These tendencies have led some publicists to conclude that there is an "enormous increase in the range and power of bureaucracy, which is now the most potent influence in our system, and which is most ineffectually controlled."

It is very often complained that the policy of a Minister is largely shaped by the Department over which he presides.

This is so, because a Minister is in charge of a Department for a brief period, while the officers of his Department are professional experts. "In a majority of cases," writes Mr. Ramsay Muir, "he ( the Minister ) has no special knowledge of the immense and complex work of the Department over which he is to preside..... He has to deal with a body of officials who may be, and often are, men of far greater

Increase  
of power  
of the  
Departments

Charge of  
bureaucratic  
tendency

ability than himself, and who have been giving their whole time to the study of the problems of the office, during the years when he has been making his position in the world, or taking hot air on platforms. They bring before him hundreds of knotty problems for his decision, about most of them he knows nothing at all. They put before him their suggestions supported by what may seem, the most convincing arguments and facts. Is it not obvious that, unless he is either a self-important ass, or a man of quite exceptional grasp, power and courage (and both of these types are uncommon among successful politicians), he will, in ninety-nine cases out of a hundred, simply accept their view, and sign his name on the dotted line..... On the whole, the policy of the 'Office' will nearly always prevail; its powers of quiet persistence and of quiet obstruction, and its command of all the facts, are irresistible except to a man of commanding power."

But a minister who knows what he wants can easily impose his personality upon his officials. Ministers like Lord Haldane, Mr. Lloyd George, Mr. Churchill and Mr. Arthur Henderson have been able to transform the spirit of the officials during the tenure of their office.

Refutation  
of the  
charge

Ministers who have no particular policy of their own and yet want to do something, accept the policy of their Departments and enlist the support of the Cabinet to push it to the statute-book. There are other ministers who have neither the inclination to make a name for themselves nor any clear-cut policy of their own. When such ministers hold the charge of a Department, they, with their experience of public life, are able to direct the Civil Service as to what it should not do. Public men, who attain the rank of ministers, are usually endowed with qualities of judgment and initiative, and with these they do check and control the judgment and initiative of the officials.

Moreover, a Cabinet which takes office with a policy which it desires to carry out, and has the requisite support in the House of Commons, can carry out that policy

Relation  
between  
Ministers  
and Civil  
Servants

without any resistance from the permanent officials. "Determination of policy is the function of Ministers," said Sir Warren Fisher, the Permanent Secretary to the Treasury in his evidence before the Royal Commission on the Civil Service in 1929, "and once a policy is determined it is the unquestioned and unquestionable business of the Civil Servant to strive to carry out that policy with precisely the same good will whether he agrees with it or not. That is axiomatic and will never be in dispute. At the same time it is the traditional duty of Civil Servants, while decisions are being formulated, to make available to their political chiefs all the information

and experience at their disposal, and to do this without fear or favour, irrespective of whether the advice thus tendered may accord or not with the Minister's initial view." It is the competence of Civil Service which acts as a great check upon incompetence in general administration.

## V. Delegated Legislation and Judicial power of Departments

In 1929 Lord Hewart, Lord Chief Justice of England, published a sensational book called "The New Despotism" in which he warned the public against the growing tendency towards Bureaucratic control. He attacked the Civil Service on the ground that it was presuming to exercise power, some of which belonged to Parliament and most of which belonged to the judiciary. He was ably seconded in 1930 by Mr Ramsay Muir, the Chairman of the central Liberal organisation in "How Britain is Governed", and in 1931 by Prof. C K. Allen of Oxford University in "Bureaucracy Triumphant"

**Cry of Liberty in danger**

Government Departments are now given power to make 'provisional orders' in the place of private bills and to make 'statutory' or 'departmental' orders to fill in the details of public bills passed by Parliament. In the former case the Department concerned issues orders after investigation of questions like the extension of the powers of a public authority or a public service such as trainway line. Action may be taken immediately after the passing of such an order, but it will come before Parliament sometime during the session for confirmation, which is seldom refused. To this type of subsidiary legislation there seems to be no objection, but the difficulty lies with the other kind of Departmental orders. English laws used to be detailed and specific and the administering authority used to be left with only a narrow discretion. But the multiplication of the functions of Government and the growing complexity of legislation make it necessary that Parliament should merely lay down the broad principles in a statute and delegate to the Departments concerned the authority of issuing Rules and Orders to fill in the details. In 1890, 160 Rules and Orders were made; in 1913, 444; in 1928, as many as 800. Some of these have force 'as though they are part of the Act'. These Rules and Orders affect the daily life of the citizen much more than the authorising statutes. Moreover, their political reasonableness as affecting public liberty and utility, is judged by no tribunal.

**Provincial and Statutory Orders**

Some examples of the delegated legislation will show whether

or not the legislative function has been transferred to any extent from Westminster to Whitehall. In the Rating and Valuation Act of 1925 the Minister concerned was not only given the power to issue Orders and to 'do any other thing which appears to him necessary or expedient' but also the authority 'to modify the provisions of this Act so far as may appear to the Minister necessary or expedient for carrying the Order into effect'. The National Government carried out its emergency legislation of 1931 through the medium of a few general laws implemented by a series of Orders in Council. In the matter of town planning, the Act of 1932 lays down very general principles, and allows the Ministry of Health, after consultation with local authorities, to promulgate planning scheme. The tariff legislation of 1932 allows the Tariff Board to fix tariffs almost entirely at its own discretion. The Unemployment Insurance Act of 1934, which sets up a Commission to advise as to scales of relief payment, empowers the Ministry of Health to make changes in relief payments by order. The Lord Chancellor appointed in 1929 a Committee on Ministers' Powers to investigate the problem of delegated legislation. The Committee pointed out that the delegation by Parliament of powers to legislate on matters of principle was an unusual practice. It showed by analysing the Road Traffic Act of 1930 as a normal type of delegated legislation that the Act conferred on the Minister of Transport "wide powers of further restricting or even prohibiting the driving of motor as well as other vehicles or of any specified class or description of vehicles on any specified road." The Committee commented that, "No one who has ever been in a motor car would desire Parliament to undertake this task itself, and the staunchest upholder of the British Constitution is unlikely to maintain that it is seriously threatened by delegation of such a type." The Committee however recommended that a Standing Committee of the House of Commons should be set up and to it all Orders and Regulations are to be submitted before they go into effect. The duty of the Committee would be to draw the attention of the House to anything exceptional in the character of Orders before it confirms them.

The Departments are invested with power to settle disputed points and the 'decision of the Minister (that is of the Civil Servants) is declared to be final. Thus, the Minister of Health can strike the name of a doctor off the panel under the Health Insurance Scheme if he is convinced that the doctor is guilty of giving to a patient more expensive medicine than what the Minister thinks desirable. The doctor cannot go to the law-court for getting his name reinstated, because the Act says that the decision of the Minister is final.

Character of  
delegated  
legislation

Judicial  
powers of  
Departments

But it should be noted that the ordinary courts cannot deal with the vast mass of technical issues which arise under the legislation as to old age, invalid and disability pensions, under the regulations as to education, or the complex issues affecting sanitation, public health, town planning and construction of houses. Moreover, the Departmental tribunals are more easy of access than the ordinary courts, their procedure is less technical, and much less expensive; they decide more rapidly and their members have specialised knowledge. "Nothing in all this", observes Prof. Laski, "lends support to the charges of 'despotism' which Lord Hewart thought fit to make against the Civil Service in so sweeping and comprehensive a way. .... There is nothing in the experience of administrative law in this country that affords ground for suspicion that we are in danger of bureaucratic rule."

## VI. Reform of Parliament

### Suggestions for overcoming the danger

The chief reason for this usurpation of legislative authority by the executive is the congestion of business in the Parliament.

**Congestion of business and its remedies** The number of measures which have had to be dropped at the end of a session for lack of time, the inadequate consideration of measures which are passed, the absence of effective discussion over policy and finance are the signs of congestion. The House of Commons has tried repeatedly to remedy this position by reforming its procedure. It has introduced closure, developed a system of committees, granted self-government to the Irish Free State, and set up a Parliament with powers to deal with domestic affairs in Northern Ireland. But some radical measures are urgently needed for effectively relieving the congestion.

One method of doing this is to set up separate Parliaments for England, Scotland and Wales with powers to deal with purely domestic affairs. The Parliament of Westminster **Provincial Parliaments** would then be relieved of a great deal of business and so be able to attend better to its proper concerns—foreign and imperial policy and the affairs of the United Kingdom as a whole. In 1919, the House of Commons recommended that subordinate legislatures should be set up. As a result of this a Conference was held in 1920 and two different proposals emanated from it. One half of the Conference held that there should be no separate election for the subordinate legislatures—and that there should be for each of these countries a small second chamber chosen by the Committee of Selection of the House of Lords. The other half of the Conference advocated the

setting up of subordinate Parliaments for England, Scotland and Wales, directly elected by the people.

There is also an alternative scheme. It is recognized that the issues which confront the modern state are largely economic and social; and it is suggested that what is required is that Parliament should set up Economic Council or <sup>Economic Council</sup> Parliament of Industry to which it should delegate its powers of legislation and administration in economic affairs. If this line of advance be thought uncongenial to the spirit of the British Constitution, effective representation of economic and social interests in connection with the administrative departments of the state should be secured. The great departments of state should have councils representative of the interests which they administer. Such councils should initiate much of the legislation affecting economic and social interests. This would relieve Parliament of the stress of business because measures would have already been discussed publicly in these special councils.

With the rise of the Labour party and the extension of franchise, acute problems regarding representative system has arisen. So long as there were only two political parties, each constituency was contested by two candidates and he who received the largest number of votes was elected. Thus the party for which a majority of total votes had been recorded, secured a majority in the House of Commons. But now generally three candidates contest a seat; of these A may get 20,000 votes, B 15,000 and C 10,000. A is declared elected though he was obtained only 20,000 votes in a total poll of 45,000. The majority of voters (25,000) thus remain unrepresented. In an election conducted under such conditions a party may obtain a majority in the House of Commons, though its candidates have obtained a minority of the total votes polled. The following tables illustrate the utter disparity between the seats captured by a party and the number of votes cast for it. <sup>Defects of the representative system</sup>

### 1924 Election

| Parties      | Votes cast for it | Parliamentary seats obtained | Number of Votes to elect one Member |
|--------------|-------------------|------------------------------|-------------------------------------|
| Conservative | 7,854,523         | 412                          | 19,000                              |
| Liberal      | 2,928,747         | 44                           | 73,000                              |
| Labour       | 5,489,077         | 151                          | 36,000                              |

### 1929 Election

|              |           |     |        |
|--------------|-----------|-----|--------|
| Conservative | 8,658,910 | 260 | 33,284 |
| Liberal      | 5,305,123 | 59  | 89,917 |
| Labour       | 8,384,461 | 289 | 29,012 |

## 1935 Election

| Parties  | Votes cast for it | Parliamentary seats obtained | Number of Votes to elect one Member |
|--|-------------------|------------------------------|-------------------------------------|
| GOVERNMENT   |                   |                              |                                     |
| (Conser-<br>vatives,<br>Liberal<br>Nationals,<br>National<br>Labour,<br>Nationals)         | 12,800,000        | 482                          | 80,000                              |
| OPPOSITION   |                   |                              |                                     |
| (Labour,<br>Liberals,<br>Independent<br>Labour,<br>Independents<br>and one Commu-<br>nist) | 10,800,000        | 188                          | 56,000                              |

An attempt was made by the Ullswater Conference on Electoral Reform which met in 1930 to suggest new Electoral methods. It suggested Alternative vote and Single transferable vote or Proportional Representation. Under the Alternative vote the Single-member district would be retained, but each voter would express a second choice, so that if his first choice was third in the count, his ballot would then be counted for his second choice. The candidate receiving the lowest number of votes would be eliminated and his votes would be divided between the two stronger candidates so that in the final count one would get a majority. The system of Proportional Representation has already been discussed. In 1931, the Labour Government proposed the Representation of the People Bill, in which Proportional Representation was not included. The Bill was rejected by the House of Lords. The introduction of Proportional Representation would give rise to artificial groups

Suggestion  
for  
remedy

## VII. Parties and Policies since 1918

Before the Great War of 1914 England was largely a *Laissez-faire* State, but in course of the last twenty-seven years she is being transformed into a 'social service' state, in which greater and greater powers of initiative and control are being centred in the government. A Coalition Government was formed in 1916 under Mr. Lloyd George and continued up to 1918, when a general election was held. As a result of the election the Coalition Party gained an overwhelming majority. The party consisted of the

Coalition  
Government  
1916-18 and  
1918-22

Conservatives, who were known as Unionists because of their advocacy of maintaining the union between England and Ireland, a section of Liberals who followed Mr Lloyd George and a few members of the Labour Party. Out of 707 members of the House of Commons, Coalition Unionists commanded 334 seats, Coalition Liberals 136 seats, Coalition Labour 13 seats, Unionists 50 seats, Liberals (under Mr Asquith) 29 seats, Labour 59 seats, Nationalists 7 seats, Sinn Fein Party 73 seats and others 6 seats. The result of the election thus showed a decline in the Liberal Party and strengthening of the Labour Party. Mr Lloyd George, though nominally a Liberal, was head of a Government in which Conservatives had a majority. The Coalition Government lasted up to October 1922, when the Conservatives resolved not to support the Coalition any longer. Mr. Lloyd George at once resigned and the King entrusted Mr Bonar Law to form the Government. Mr. Bonar Law dissolved Parliament and won a striking success at the polls.

As the representatives of the Irish Free State no longer sat at Westminster, the House of Commons consisted of 615 members. Of these 344 were Conservatives, 142 Labour members, National Liberals under Mr. Lloyd George 61 and Liberals under Mr. Asquith 53, 12 Independents, 2 Irish Nationalists and 1 Sinn Feinner. The Conservative Government of 1922-24 was a restoration of the normal party government. Mr. Bonar Law had to resign his post as Prime Minister owing to his ill health. The King selected Mr Baldwin in preference to Lord Curzon, as Prime Minister because he felt that the Prime Minister must be in the Commons, since the Labour Opposition was not represented in the Lords. In the autumn of 1923 the Dominion Prime Ministers appealed to the English Government to aid them by protectionist legislation. But the Conservatives had won the election of 1922 on the pledge that they would not give up the Free Trade policy. Mr. Baldwin, therefore, dissolved the House of Commons to seek the mandate of the electorate.

As the result of the election of 1924 the Conservatives lost their absolute majority. They gained 258 seats, the Labour Party 191 seats, Liberals 159 seats and Independents 7 seats. Mr. Baldwin met Parliament, but was at once defeated on a Free-trade motion supported by the Labour and Liberal parties. He resigned, and Mr. Ramsay MacDonald, the leader of the Labour Party was entrusted with the task of forming the first Labour Government. The Labour Government was a minority government and hence was weak. It could not follow a socialistic policy. The Prime Minister dissolved the House of Commons on his



defeat in a minor issue. The election of 1924 was fought largely on the anti-Communist issue. The Labour party suffered for being unable to show any striking success in office and the Liberals could not gain many seats for having supported the Labour party. The Conservatives again secured 412 seats, the Labour party 151 seats, Liberal party 49 seats and Independents 12 seats.

Mr Stanley Baldwin formed his second Conservative Government on November 4, 1924. Like Sir Robert Peel in 1836 he infused a new spirit in the Conservative party. Instead of upholding the interest and privileges of the richer classes in toto, the party now approved of a readjustment of the national income and a rearrangement of national institutions for the benefit of the lower classes. Mr. Winston Churchill, as Chancellor of the Exchequer, brought about the restoration of the Gold Standard in 1925, restored the old special duties on automobiles, watches and other selected articles, and sponsored the Safeguarding of Industries Act of 1925 with a view to protect industries which suffered from foreign competition. The depression in the coal industry was responsible for the unemployment of many miners and over and above it the owners announced a large cut in wages. Government granted a subsidy in order to prevent the wage cut in July, 1925; but when the subsidy was withdrawn on April 30, 1926 and the Government proclaimed an emergency under the Emergency Powers Act of 1920, a "general strike" became inevitable. The "general strike" was declared on May 3, 1926. The workers in railway and transports, printing press, building trades and the iron and steel industry went on strike. The strike came to an end on May 12. The Government had promised not to persecute the leaders, yet there was a good deal of victimisation. Parliament passed the Trades Disputes Act of 1927, by which political strikes and sympathetic strikes were virtually outlawed. During the five years of administration (1924, November to 1929, June) the Conservatives created two public corporations viz, the Electricity Board and the British Broadcasting Corporation (1926), to show that they were not adverse to socialized activity; they also enacted the Representation of the People Act of 1928, giving equal right of franchise to women

As a result of the general election of 1929, the Conservatives lost many seats because of their unsympathetic treatment towards workers. They gained 260 seats, the Labour party got 288 seats, the Liberals 59 seats and others 8 seats. Mr. Baldwin resigned and the second Labour Ministry was formed by Mr. Ramsay MacDonald on June 8, 1929. The Liberals supported the Labour party in Parliament.

The second  
Baldwin  
Government  
1924-29

The second  
Labour  
Ministry  
1929-31

The Labour Government was faced with the great Depression, when national income was falling and unemployment was growing enormously. By 1931, the Depression assumed a severe form and the Government found it impossible to balance the budget. The Bank of England had to withstand a drain on its resources, and in August, 1931, there was a break in sterling. All the three parties held that the national financial emergency required concerted efforts. Mr. Ramsay MacDonald dissolved the Labour Ministry and formed the National Government in co-operation with the Conservatives and the Liberals.

In the first National Government, the Cabinet consisted of ten members—4 Labour, 4 Conservatives and 2 Liberals. Other ministerial posts were held by Liberals and Conservatives. The majority of members of the Labour party withdrew their support from the National Government, because they disliked the Government's proposal for curtailing unemployment relief, and because they had no confidence in MacDonald, Snowden and Thomas, their former leaders. On September 8, 1931, 243 Conservatives, 53 Liberals, 12 Labour and 3 Independent members passed a vote of confidence in the National Government as against 242 Labour and 9 Independents. The National Government increased the income tax to five shillings per pound, imposed a few taxes on consumption and effected cuts in salary and unemployment relief. There arose grave discontent in the country. On September 21, Parliament absolved the Bank of England from the necessity of redeeming its notes in gold. England thus went off the gold standard; but the pound remained stable at about sixteen shillings and the depreciation encouraged British foreign trade. The Government then dissolved Parliament in October, 1931, with a view to secure a mandate from the electorate to "do anything it thought best."

As the result of the election the Government secured overwhelming majority, composed of 470 Conservatives, 3 Nationals, 33 Liberals of Sir Herbert Samuel group and 35 Liberals of Sir John Simon's group, 13 National Labour and 5 Independent members. The Opposition consisted of 52 Labour and 4 Independent Liberal members under Mr. Lloyd George. The Cabinet now consisted of 18 members, of whom 11 were Conservatives, 4 belonged to the National Labour party under Mr. Ramsay MacDonald and 3 to the Liberal groups. Mr. Baldwin, leader of the Conservative party became the leader of the House of Commons but allowed Mr. Ramsay MacDonald to continue as Prime Minister. Mr. Neville Chamberlain, a pronounced protectionist became Chancellor of the Exchequer. He sponsored the Import Duties

Act which came into effect on March 1, 1932 and with its passing England finally gave up the Free-Trade policy which she had adopted in 1846. He converted the 5 per cent War loan to three and a half per cent loan, not redeemable before 1952. The Liberals were staunch Free-Traders and when the Ottawa Agreement was accepted on September 28, 1932, the Liberals in the Ministry went out of the Government. Mr. Ramsay MacDonald had become old and confused. So he resigned his nominal Prime Ministership in June, 1935 and Mr. Baldwin took up his post. His resignation transformed the National Government into a virtually Conservative Government. In November, 1935 the Parliament was dissolved and a new election was held. The results of the election were as follows.

| GOVERNMENT       |     | OPPOSITION   |     |
|------------------|-----|--------------|-----|
| Conservative     | 387 | Labour       | 154 |
| National         | 8   | Independent  |     |
| Liberal National | 34  | Labour Party | 4   |
| National Labour  | 8   | Liberal      | 20  |
| Independent      | 4   | Communist    | 1   |
| <hr/> 486        |     | <hr/> 179    |     |

Mr. Baldwin resigned in May, 1937 on account of his old age. Mr. Neville Chamberlain became Prime Minister on May 28, 1937 at the age of sixty-eight and the Cabinet was also reconstituted. As has been stated before, this Cabinet gave place to the War Cabinet in September, 1939.

The National Government carried on a policy of national reconstruction of a mildly collectivist sort. The Town and Country Planning Act of 1932 empowered local authorities to plan and replan any area and the Ribbon Development Act of 1935 prohibited the construction of buildings along main roads. The Housing Act of 1935 aimed at preventing overcrowding and provided subsidies for that purpose. After the creation of the London Passenger Transport Board in 1933 control over all tubes, trams and buses was handed over to this great Public Corporation. The Government was attentive to the promotion of education and relieving of the burden of unemployment. With a view to achieve both these objects the Education Act of 1936 provided that the school leaving age would be raised from 14 to 15 from September, 1939. The National Government undertook an intensive planning in Agriculture. The quality, markets and price of essential products like milk, bacon, pigs, hops, potatoes are determined for the producers by the Government under the Agricultural Marketing Acts of 1931 and 1933. Subsidies are provided for certain industries. But the Government could not tackle with

Position of  
parties in  
Parliament  
at present  
(Nov. 1939)

Work  
of the  
National  
Government

the problem of unemployment in coal mining, iron and steel, engineering, cotton, ship building and building construction industries. The Unemployment Insurance Act of 1936 brought the agricultural workers within the insurance scheme. The Government had to restrict liberty of the individual on the ground of national necessity. The Incitement to Disaffection Act of 1934, popularly known as the Sedition Act, enabled the police to search premises for possessing material which might be used to cause disaffection in the armed forces of the Crown. In July, 1938 a boy of 18 was sentenced to one year's imprisonment under this Act for having talked pacifism to a corporal in the air force. The Public Order Act of 1936 prohibits the maintenance of private military associations and empowers the police to restrict parades, to enter public meetings and dissolve them on suspicion that there is danger of breach of the peace. "The cumulative effect," observes Prof Laski, "of the habits of the post-war epoch in matters concerning public liberty bears an unhappy resemblance to the atmosphere in the period between the end of the Napoleonic Wars and the Reform Bill of 1832. In each case there was serious industrial dislocation, and panic among the governing class as its outcome. In each case the panic led to repressive legislation which was used to limit the right of peaceful political activity to make its impact upon public opinion. In each case, also, the sense of alarm communicated itself to the Judiciary, which, both in the High Court and in petty sessions, distinguished itself by the severity of its sentences. In each case, also, the result of all this has been to undermine the public sense of confidence in the impartiality of the Courts." There was peace in England for nearly forty years after the fall of Napoleon, but the peace after the fall of Kaiser William II lasted only for twenty-one years. The outbreak of the present war shows that the Government was justified in taking precautionary measures against sedition. Individuals can not be allowed to do anything to endanger the safety of the state in a period of national crisis.

Dangers to  
individual  
liberty

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## CHAPTER XXVI

### THE DOMINION OF CANADA

#### I. The Evolution of the Dominion of Canada

Canada is the largest of the Dominions both in area and in population. The total area of Canada is 37 lakh square miles, whereas that of India is a little above 18 lakh square miles

**Area and Population** But the population of the Dominion is about 11 millions, that is, about one-fifth of the population of Bengal and one-third of that of Behar. The population of Canada, like that of India, has no homogeneity in race, religion and language. Of the total population, 52 per cent are of British origin, while 28 per cent are of French, and  $4\frac{1}{2}$  per cent are of German extraction; 12 per cent belong to the diverse European nationalities and 3 per cent are of Negro and Native Indian stock. In spite of this diversity, national feeling is very strong among all classes of Canadians.

**Political and economic divisions** The provinces which joined the Confederation in 1867 are Quebec, Ontario, Nova Scotia, and New Brunswick. Subsequently, Manitoba joined in 1870, British Columbia in 1871, Prince Edward Island in 1873, and Saskatchewan and Alberta in 1905. Besides these provinces, there are two territories, namely, the Yukon and North-west Territories. Bankers, financiers and directors of Trust Companies exercise the predominant influence in Dominion politics. Eastern Canada is the seat of finance, commerce and manufacture, while Western Canada depends mainly on the growing of grains.

**Important stages in constitutional development** The important stages in the constitutional development of Canada are marked by the Quebec Act of 1774, the Canada Act of 1791, the Union Act of 1867, and its amendments of 1875, 1907, 1915 and 1930, the Act of 1871 respecting the establishment of Provinces and the Letters Patent of 1931 constituting the office of Governor-General and Commander-in-chief.

Canada was originally a French colony, set up in 1608. It was conquered by the British in 1759-60 and formally passed under British rule by the Treaty of Paris in 1763. The widespread but sparsely populated province of Quebec was governed according to the Quebec Act of 1774. The Act provided that the province was to be governed by the Governor with the help of a nominated legislative council. The council had extremely restricted power. The Quebec constitution made no

provision for *habeas corpus*, or for the trial of Civil cases by jury

A large number of 'Unity Empire Loyalists' migrated from the United States to Canada after the declaration of the American War of Independence. They carried on agitation for securing responsible government in Canada. With a view to tackle this problem Pitt, <sup>Development between 1774 and 1837</sup> the Younger, passed the Canada Act of 1791. It created two distinct provinces, an English province of Upper Canada to the west, and a French province of Lower Canada to the east. Each was endowed with an elected Legislative Assembly, having control over taxation and legislation, and a nominated Legislative Council. The Legislative Council was to consist of at last 7 members in Upper Canada and 15 members in Lower Canada; additional members could be nominated by the Crown. The executive still remained independent of the legislature, and this caused much friction between the two bodies. The legislature, being denied responsibility, acted irresponsibly and used their control over laws and taxes to make government very difficult. In Lower Canada the quarrel took a nationalist complexion, because the Executive Council was entirely British while the Assembly was overwhelmingly French. Rebellion broke out in both the provinces. The British Government sent out Lord Durham as Governor and High Commissioner to enquire into the whole situation in all the Canadian colonies.

Durham made full enquiry and submitted his classic *Report on Canada* in February 1839. He traced all the evils to the failure to bring home to all citizens their responsibility for the common welfare. He recommended the union of <sup>Durham Report</sup> Upper and Lower Canada, as the best means of solving the racial question and establishing a stable government. At that time the population of Upper or British Canada was 4 lakh, while the number of English and Scottish people in Lower or French Canada was 1½ lakh and there were 4½ lakh of French there. Durham believed that the union of the provinces would give a clear majority to the English and force the French to abandon their hopes of nationality. He advocated that the responsibility must be thrust upon the people, by giving supreme power to their representatives and ensuring that the executive government should be responsible to the legislature. He held that the Imperial Government should confine their action to matters truly imperial, e.g., foreign policy, defence, the regulation of trade and the control of public lands; in other affairs the local administration should be left free.

The Act of 1840 implemented one of the recommendations

of Durham. By it Upper and Lower Canada were united under a two-chamber Legislature, a Legislative Council whose members sat for life, and a House of Assembly with an equal number of members from each Province. But the executive was not made responsible to the Legislature till Lord Elgin was appointed Governor in 1849. The establishment of responsible government brought in an era of unprecedented prosperity to Canada. Her population grew from a million and a half in 1840 to more than three millions and a half in 1871. But most of the immigrants preferred to settle in Ontario or Upper Canada. Consequently Ontario demanded a larger number of representatives in the Legislature. The French opposed the demand on the ground that it would re-establish British racial ascendancy. The solution of the problem lay, therefore, in separating the provinces and federating them. The danger of annexation by the United States, the similarity of economic problems, the need of expanding railways and settling new lands made the case for federation fairly strong.

The way in which the federation was brought about in Canada is of great interest to India at present. A federal scheme was not propounded in London and imposed on the Canadian people. On the other hand, the Canadians themselves formulated the scheme and the British Parliament merely enacted it without alteration. The legislatures of New Brunswick, Nova Scotia and Prince Edward Island passed resolutions authorizing their governments to send representatives to a Convention to be held at Charlottetown in September, 1864. The government of the United Provinces (Quebec and Ontario), without waiting for an invitation sent a delegation to this Convention to urge a confederation of all the British provinces. The delegation was cordially received and it was decided to hold a second Convention at Quebec in October. The second Convention sat behind closed doors from October 10 to October 28. It agreed to have a federal union, and issued 74 confederation resolutions. The scheme was submitted to and adopted by the various Parliaments. Then a final conference was held in London; and in 1867, the British North America Act was passed through the British Parliament without alteration.

During the fortyseven years, between 1867 and 1914, the Dominion of Canada secured the following rights. (1) "the right to make her own tide-water coastwise navigation laws—a right first exercised in 1870, (2) the right of the Dominion Cabinet to veto a nomination to the office of Governor-General—a right that has existed at least since 1882; (3) the right of the Dominion to direct

Responsible  
Government

Procedure  
adopted in  
federating  
the  
Provinces

Develop-  
ment from  
1867 to 1914

representation on the judicial committee of the Privy Council at Whitehall—a right first exercised in 1897, when Sir Henry Strong, then chief Justice of Canada, took his seat on the Judicial Committee; (4) the right of the Dominion to decide whether it will be a party to treaties made by Great Britain—a right enjoyed since 1872; (5) the right of the Dominion to make her own immigration laws, and to exclude paupers and other undesirables from the United Kingdom or elsewhere in the British Empire—a right first asserted and exercised in 1904, and (6) the right of the Dominion to appoint her own plenipotentiaries for the negotiation of commercial treaties and conventions—a right partially conceded as early as 1870, and fully conceded by the Imperial Government in 1907.”

Canada along with the other Dominions rendered great help to Great Britain in the first World War of 1914—1918. In 1916, she claimed a part in formulating the foreign policy of the empire. The Imperial Government invited the Prime Ministers of the Dominions and representatives of India to visit England in 1917, and to become members, for the time being, of the War Cabinet. In the Peace Conference of 1919, Canada along with Australia and South Africa were represented each by two delegates. In the Imperial Conference of 1926 the position of the Dominions was thus defined: “They are autonomous communities within the British Empire, equal in status, in no way subordinate one to another in any aspect of their domestic or external affairs, though united by a common allegiance to the Crown, and freely associated as members of the British Commonwealth of Nations.” The position was authoritatively defined by the Statute of Westminster, 1931.

Definition  
of  
Dominion  
Status

## II. Characteristics of the Canadian Constitution.

Canada has been called the constitutional laboratory of the modern British Commonwealth. The experiment of reconciling Imperial membership with the privileges of self-government was first tried in Canada. The architects of the Canadian constitution were enamoured of the British constitution and adopted it in a federal cast. They tried to avoid those conditions which gave rise to the civil war in the United States of America in 1861-1865. Referring to the struggle over the rights of the states in the U. S. A., John A. Macdonald declared in 1860: “The fatal error which they have committed and it was perhaps unavoidable from the state of American colonies at the time of the revolution was in making each state a distinct sovereignty. The fatal error was made in giving to

Residuary  
power  
in the  
Dominion



each state distinct sovereign power, except in those instances where powers were specially reserved by the constitution and conferred upon the general government. The true principle of confederation lies in giving to the general government all the principles and powers of sovereignty, and in the provision that the subordinate or individual states should have no powers but those expressly bestowed on them. We should have a powerful central government, a powerful central legislature, and a powerful decentralized system of minor legislatures for local purposes." These principles were adopted in the Dominion Constitution of 1867. The residuary powers are vested in the Dominion Government, whereas in the U. S. A. and in the Commonwealth of Australia they are located in the states or provinces.

The British North America Act of 1867, passed by the British Parliament constitutes the greater portion of Canada's written constitution. According to legal theory, the authority that passed it, alone can amend or repeal it. But from the beginning, the convention arose that an alteration would readily be made in the Act at the request of the federal legislature, provided that there was no substantial opposition of provincial governments. The Statute of Westminster, 1931, has not altered this position, because the provinces agreed to that Statute with the reservation that "the *status quo* should be maintained in so far as the question of repealing, altering or amending the British North America Act was concerned." At a Dominion Provincial Conference held in 1935 it was agreed that Canada should have the same power as other Dominions to amend its constitution, provided that a method could be devised satisfactory to both the Dominion Parliament and the provincial legislatures.

In the U. S. A. as well as in Australia the Constitution establishes a Federal Judiciary with a Supreme Court which has power to interpret the Constitution. But in Canada there is no system of federal courts. Disputes regarding the interpretation of the constitution are settled by the Judicial Committee of the Privy Council.

The Canadian Constitution is in form a federal one, but in spirit it is unitary. The Dominion Government possesses the power of disallowing provincial acts. It appoints and dismisses the Lieutenant-Governors of the provinces. It also appoints the judges of the provincial Courts. The Canadian Senate consists of members nominated for life by the Dominion Government, whereas the U. S. A. and the Australian senators are elected in equal numbers from the states. If the existence of a Federal Court, comparative

Amendment  
of the  
Constitution

Interpreta-  
tion of the  
Constitution

The  
Canadian  
Constitution  
is not a true  
federation

freedom of the provinces from the interference of the federal authority, and the composition of a second chamber to represent the states be the essential marks of a federation, Canada has not got a truly federal constitution

### III. Distribution of Legislative powers between the Centre and the Provinces

It has already been pointed out that the intention of the fathers of the Canadian Constitution was to make the federal government strong. They divided the subjects into four divisions. In the first division are those subjects which are assigned <sup>Three lists of subjects</sup> exclusively to the Dominion Parliament. In the second division are those which are assigned exclusively to the provincial legislatures. In the third are the subjects of concurrent legislation and the fourth comprises the subject of education. In the section assigning subjects to the Dominion Parliament, it is declared that it shall be lawful for the sovereign, "by and with the advice and consent of the Senate and the House of Commons, to make laws for the peace, order, and good government of Canada, in relation to all matters not coming within the classes of subjects by this act assigned exclusively to the legislatures of the provinces. The Dominion has exclusive power to legislate regarding military and naval defence, the postal service, currency, banking, bills of exchange, interests, legal tender, the census and statistics, navigation and shipping, beacons etc., sea-coast and inland fisheries, inter-provincial and inter-national ferries; patent, copy-right, bankruptcy, marriage and divorce; criminal law including procedure, but excluding the constitution of courts; naturalization and alienage, and Indians and the lands reserved for them. The Dominion Government has an absolutely unlimited right of taxation and of raising loans and has general power to regulate trade and commerce.

The provinces have power to legislate on property and civil rights, education, incorporation of companies which will restrict their operations within the province, control of public works and undertakings and in general all things of <sup>Provincial subjects</sup> a local nature. The power of the province to tax is limited to direct taxation and the imposing of shop, saloon, tavern auctioneer or other licenses, with a view to raising revenue for provincial, local or Municipal purposes. They can borrow money on the sole credit of the province. The resources of the provinces are inadequate to maintain them; so subsidies are granted by the Dominion.

In the third division are enumerated the subjects under

concurrent legislation. The section reads: "In each province the legislature may make laws in relation to agriculture in the province, and to immigration into the province. And it is hereby declared that the Parliament of Canada may, from time to time, make laws in relation to agriculture in all or any of the provinces, and to immigration into all or any of the provinces; and any law of the legislature of a province, relative to agriculture, or to immigration, shall have effect in and for the province as long and as far only as it is not repugnant to any act of the Parliament of Canada." In short, in matters of immigration and agriculture the provinces and the dominion have concurrent legislative authority, but in cases of conflict federal acts prevail.

In the fourth division is mentioned the jurisdiction over education. In each province, the legislature may exclusively make laws in relation to education. But this provision is subject to certain restrictions, which have been imposed to protect the interests of minorities, especially the Roman Catholics. The most important restriction is that nothing in "any such law shall prejudicially affect any right or privilege with respect to denominational schools which any class of persons have by law in the province at the union." In the province of Quebec the legislature can not enact a law prejudicial to separate schools. Protestant or Roman Catholic, without contravening this section (93). The two other restrictions are as follows: where in any Province a system of separate or dissentient schools exists by law at the union or is thereafter established by the Legislature of the Province, an appeal shall lie to the Governor-General in Council from any act or decision of any provincial authority affecting any right or privilege of the Protestant or Roman Catholic minority of the Queen's subjects in relation to education. In case any such provincial law, as from time to time seems to the Governor-General in Council requisite for the due execution of the provisions of this section, is not made, or in case any decision of the Governor-General in Council on any appeal under this section is not duly executed by the proper provincial authority in that behalf, then and in every such case, as far only as the circumstances of each case require, the Parliament of Canada may make remedial laws for the due execution of the provisions of this section and of any decision of the Governor-General in Council under this section.

The intention of Sir John A. Macdonald and other architects of the Canadian Constitution to centralise governmental authority has been largely defeated by the Canadian courts and the judicial committee of the Privy Council, which have increased the power of the provinces by interpreting liberally the subjects relegated to provincial control.

Concurrent  
jurisdiction

Special  
provisions  
for  
education

Attempts to  
centralise  
the  
Government  
defeated

The decisions in the cases of *Toronto Electric Commissioners vs. Suder et al* (1925) and *Fort Francis Pulp and Power Co. vs. Manitoba Free Press* (1926) show that the tendency is to give to the provinces under "property and civil rights" a virtual residuum of power. The federal power of disallowing provincial statutes has practically fallen into disuse. Canada is a vast country and as such extreme centralisation is not suited to her condition. In this sense the shifting of power from the centre to the provinces—the exact reverse of what has happened in the U. S. A.—may be said to be desirable. At present, however, the Federal Government is trying to regain its lost power. It has disallowed a law of Manitoba which introduced a scheme of initiative and referendum on the ground that such a step would deprive the Lieutenant Governor of his power to assent or refuse to assent to provincial bills.

#### IV. The Crown and the Governor-General

The Crown is the symbol of unity between Great Britain and the Dominions. According to the British North America Act of 1867, the executive government and authority of and over Canada was vested in the Queen. Bill passed by the Canadian Parliament had to be presented to the Governor-General for the queen's assent and those bills which were reserved for signification of the queen did not become valid till <sup>Position of the Crown</sup> (within two years) the Governor-General signified by speech or message that these had received the assent of the Queen-in-Council. In theory, all laws, whether federal or provincial, are still enacted by the King-in-Parliament; but in practice the veto power of the King has fallen into disuse. The Canadian Parliament is now competent to pass any law it likes.

The Governor-General is the representative of the Crown in the Dominion. Formerly he was appointed with the advice of the British Government, but the Imperial Conference of 1930 definitely laid down that the appointment was to be made in consultation with the Dominion <sup>Appointment of the Governor-General</sup> Government. In accordance with this provision, the selection of Lord Bessborough as the Governor-General of Canada was made on February 9, 1931, on the sole responsibility of the Canadian Government. But the Governor-General and every other officer holding any office or place of trust or profit in the Dominion, are required to take the oath of allegiance to His Majesty, the King of England.

The Governor-General does not interfere with the policy of the

ministers or its execution. The Duke of Argyll, who was the Governor-General of the Dominion from 1878 to 1883, ceased to attend the cabinet meetings and all his successors have followed the precedent set up by him. The Governor-General stands above all parties. His attitude on all political questions is absolutely non-partisan. He appoints that group of party leaders as ministers who can command a majority in the Canadian House of Commons. The freedom of the Governor-General to express publicly on any question of contemporary politics or economics is much circumscribed.

The Governor-General has ceased to perform the ambassadorial functions since 1926. The agency functions which he used to carry out till 1928, have been transferred to the High Commissioner. In theory, he can summon, prorogue and dissolve Parliament, but in practice he exercises these functions on the advice of the ministry. The Governor-General-in-Council appoints Lieutenant-Governors of the provinces. The responsibility of disallowing acts passed by the provincial legislatures rests also with the same authority. The aggrieved minorities under section 93—the separate-schools section—may make their appeals for remedial measures to it. In India the Governor-General in the Centre or the Governor in the Province is alone responsible for the protection of minorities, and he can disregard the advice of the ministers in this respect.

The term 'Council' in Canada means the Privy Council. Members of the Cabinet are sworn as Privy Councillors. A man who is once appointed as Privy Councillor, retains the membership for life. But the Privy Council never meets as a body; its work is performed by the Cabinet.

## V. The Cabinet

Though the Governor-General and the Privy Council constitute the formal executive, the political executive is the cabinet, which is usually composed of the First Minister and 18 other ministers. These ministers are: (1) Secretary of State for external affairs; (2) President of the king's Privy Council for Canada; (3) Minister of Finance; (4) Minister of Trade and Commerce; (5) Minister of Public Works; (6) Minister of Railways and Canals; (7) Minister of Marine and Fisheries and of Naval Defence; (8) Minister of the Interior; (9) Minister of immigration and colonization; (10) Minister of Militia and Defence; (11) Minister of Agriculture; (12) Minister of Customs; (13) Minister of Inland Revenues; (14) Minister of Justice; (15) Postmaster-General; (16) Minister of Labour; (17) Secretary of State; (18) Minister of Mines; The post of

the Attorney-General is usually held by the Minister of Justice. The Solicitor-General, Parliamentary Secretaries of the department of External Affairs and of Militia and of Defence are of the Ministry but not of the Cabinet.

After a general election or a serious defeat of the ministry in the House of Commons, the Governor-General sends for the leader of the party commanding a majority or the leader of the opposition and charges him with the formation of the new cabinet. He accepts the recommendations made by the leader so charged. But as in the provinces of India, so in Canada the Prime Minister has a difficult and delicate task in selecting his colleagues. He must so select his colleagues as to <sup>How a Cabinet is formed</sup> give proper representation to (1) French Canada; (2) to the Roman Catholic population of the Dominion that is not French; (3) to the other eight provinces; (4) and to the English-speaking population of Quebec. Three cabinet ministers are usually taken from French Canada, three from Ontario, at least one from each of the provinces of Nova Scotia, New Brunswick, Manitoba, Saskatchewan, Alberta and British Columbia. The Premier also summons to his cabinet men who are Premiers of provincial governments or leaders of the opposition in provincial legislatures. These persons get themselves elected to the House of Commons to the seats which are vacated by members who look to promotion to the Senate or to a government post. The Premier, however, is not required by convention to assign any ministerial office to the senators. But he has to consider the claims of the financial interests of Montreal and Toronto. These cities exercise much influence in the selection of the Minister of finance.

The first Minister, who usually holds the post of Secretary of State for external affairs, draws 12,000 dollars, the other ministers receive 7000 dollars, and the two Parliamentary Secretaries get 5000 dollars as salary per year. <sup>Salary of Ministers</sup> Ministers without portfolio do not draw any salary.

The ministers are jointly responsible to the legislature. A minister who cannot agree to any decision arrived at by his colleagues resigns. With the permission of the Governor-General, which is never refused, he can explain in Parliament the reasons for his resignation <sup>Collective responsibility</sup> and the Premier gives a suitable reply; till recently every member of the Cabinet, who belonged to the House of Commons, in accepting an office to which a salary is attached, had to seek re-election. But this law has now been repealed. The Cabinet exercises as much control over legislation as does its British prototype. The rigidity of party discipline contribute to the supremacy of the Cabinet

## VI. The House of Commons

The Dominion Legislature consists of two chambers, namely, the House of Commons and the Senate. The House of Commons is elected by the people for five years, unless sooner dissolved. The Governor-General can dissolve a parliament at any time if his ministers ask for it, or if he thinks that a crisis has arisen and there should be a general appeal to the constituencies. But the Governor-General seldom exercises the prerogative of dissolution. He dissolves parliament usually on the advice of the Cabinet.

The House of Commons consists of about 245 members. The Constitution Act of 1867 lays down that Quebec shall have the fixed number of 65 members and that there shall be assigned to each of the other provinces such a number of members as will bear the same proportion to the number of its population (ascertained at such census) as the number 65 bears to the number of the population of Quebec (so ascertained). As Ontario is the most populous province, it sends 82 members.

The Dominion Act of 1920 awards the franchise to every male and female British subject, aged 21 and over, resident in Canada for a year and in the constituency for two months. A British Indian, Japanese and Chinese can not enjoy franchise if he or she is a naturalised subject in British Columbia. Judges appointed by the Governor-General, the chief electoral officer of the district, Election clerks, persons disfranchised for taking recourse to corrupt and illegal practices, lunatics, inmates of public charitable institutions, criminal prisoners, and persons disqualified in provincial election on racial grounds are not allowed to exercise franchise.

Twenty members, including the Speaker form the Quorum. The Speaker is elected in the first meeting of the House of Commons after a general election. The election of the Speaker must be approved by the Crown. In England, the Speaker once elected, continues to be re-elected term after term till he becomes infirm. But in Canada the convention has grown up that the Speaker should be elected alternately from among the English-speaking and the French-speaking members. The office of the Leader of the Opposition is formally recognized and he draws a salary.

Any British subject may be a candidate in an election for a seat in the House of Commons. Residence in the constituency from which one seeks election is not necessary. But government contractors and members of provincial legislatures are ineligible. The Canadian House of

Commons contains merchants, manufacturers, farmers, a few labour men, doctors and lawyers; professors seldom seek election. Many persons become members of Parliament with a view to secure a Judgeship, a Commissionership, or some other permanent and remunerative job. Members can address the House either in English or in French.

At the opening of a session a speech, foreshadowing the legislation that is to be introduced during the session and describing the material conditions in the Dominion, is addressed to the members of Parliament. The speech comes before the House of Commons on a motion made from the government benches. One of the promising young men of the Government moves that "an address be presented to His Excellency, the Governor-General, offering the thanks of this House to His Excellency for the gracious speech which he has been pleased to make to both Houses of Parliament." After the motion has been seconded, the leader of the Opposition offers a general criticism of the policies of the government. The Premier gives suitable reply to it. All the leaders on the two front benches, as well as the back-benchers take part in the debate.

Debate on  
the Address  
to the  
Governor-  
General

Bills imposing any charge on the people of the Dominion or making any grant for the services of the Crown must originate in the House of Commons. The rule of Procedure lays down that "all aids and supplies granted to His Majesty by the Parliament of Canada are the sole gift of the House of Commons; and all bills for granting such aids and supplies ought to begin with the House, as it is the undoubted right of the House to direct, limit, and appoint in all such bills, the ends, purposes, considerations, conditions, limitations, and qualifications of such grants, which are not alterable by the Senate." Money Bills must be introduced by the ministry; private members cannot introduce bills of this description.

Sole right of  
initiating  
Money Bills

## VII. The Senate

The members of the Senate are nominated for life by summons of the Governor-General under the Great Seal of Canada. The Senate consists of 96 senators,—namely, 24 from Ontario, 24 from Quebec, 10 from Nova Scotia, 10 from New Brunswick, 4 from Prince Edward Island, 6 from Manitoba, 6 from British Columbia, 6 from Alberta and 6 from Saskatchewan. Each Senator must be at least 30 years of age, a born or naturalized British subject, and must reside in and be possessed of property, real or personal to the value of 4000 dollars within the province for which he is appointed. Marriot rightly observes that the Canadian Senate has never

Composition



possessed either the glamour of an aristocratic and hereditary chamber or the strength of an elected assembly, or the utility of a senate representing the federal as opposed to the national idea. The provinces are not equally represented in it, nor is the mode of appointment calculated to secure the selection of men who would champion provincial rights. Nomination to the Senate goes to those who contribute handsomely to the Party funds or to the businessmen who are expected to secure special legislation for the benefit of great corporations. "From the first," writes Wrong, "appointments to the Senate came under the full control of the mechanism of the party. The security of the position for life, and the freedom from the labours of an election, have made a Senatorship a desirable crown of party service; and to this use the office has been put. . . . Men who have given long service in the House of Commons, sometimes claim a Senatorship for their declining years. Other claims are from those who have given similar service in the party organization, or it may have contributed liberally to the party funds. No government, Liberal or Conservative, has made any serious effort to save the post of senator as a reward for any other kind of public service, and in the present condition of public thought it would be quixotic to expect that anything but party interests should be considered."

**Senate and the Party**

Quarrels between the two Chambers are not common. On rare occasions a political party, defeated at a general election, has used its strength in the Senate to harass and thwart a new government. The Senate is more powerful than any other nominated second chamber, because there is a limit to the number of its members. Discussion over bills between the two Houses is carried on by message and not by conference.

The Senate can not claim, either by law or by convention, a fixed or any considerable number of seats in the Cabinet. There have been Cabinets of which no member was of the Senate. Generally one or two members of the Cabinet are taken from the Senate.

The Senate does not play any very important part in legislation. Government bills usually originate in the House of Commons; whereas private members' bills and bills for divorce are first introduced in the Senate. It has already been stated that finance bills cannot originate in the Senate. The Senate only gives formal confirmation to tariff bills which are sent to it from the House of Commons. In the period between 1922 and 1930 when the Senate consisted of a Conservative majority, it asserted the right to amend or reject money bills. The Senate was formed originally with the idea of providing a sort of judicial tribunal supervising and reviewing the legislation of the Commons. These expectations have not been fulfilled.

**Part played by the Senate**

### VIII. The Judiciary

There is a Supreme Court in Ottawa, having appellate, civil and criminal jurisdiction in and throughout Canada. The Supreme Court, however, does not possess any power of interpreting the constitution. This work is still being done by the Judicial Committee of the British Privy Council. <sup>Different kinds of Court</sup> There are five puisne judges and one chief justice of the Supreme Court. Each province has a superior court and most of the provinces have county courts with limited jurisdiction. All the judges in these courts are appointed by the Governor-General on the advice of the ministry. The judges hold office for life on good behaviour, and thus their independence is secured.

Canada voluntarily accepts the Judicial Committee of the Privy Council as the final court of appeal. The French Canadians regard the Privy Council as a special guardian of minority rights. If a litigant prefers to appeal from a provincial decision to the Supreme Court and not to the Judicial Committee of the Privy Council, permission is normally refused to carry the case from the Supreme Court to the Privy Council again. Dr Keith observes that, "even in Canada doubt has been widely felt regarding the desirability of the appeal in cases where no constitutional issue is involved. It is, in fact, impossible to justify the delay and expense involved in taking to the Privy Council cases turning merely on private law."

### IX. Provincial Government

The nine provinces have each a separate Parliament and administration, with a Lieutenant-Governor appointed by the Governor-General. The Lieutenant-Governors are responsible to the Governor-General, who fixes their salary and who can also remove them from office. <sup>Lieutenant Governors</sup> But a Lieutenant-Governor appointed after the commencement of the first session of the Parliament of Canada is not removable within five years from his appointment except for a cause assigned, which is to be communicated to him in writing within one month after the order of his removal is made, and is to be communicated by message to the Senate and to the House of Commons within one week thereafter if the Parliament is then sitting, otherwise within one week after the commencement of the next session of the Parliament. Two Lieutenant-Governors have been removed from office by the Dominion Government. The Lieutenant-Governor has to act according to the advice of the provincial ministry.

As in the six of the eleven provinces in India the legislature is

bicameral, so in Canada two out of the nine provinces have got two Houses of legislature. These two provinces are Quebec and Nova Scotia. The upper chamber is called Legislative Council. The members of the Legislative Councils are appointed nominally by the Lieutenant-Governor, but in reality the provincial Premier nominates them. There are twenty-four members in each of the two Legislative Councils. The provincial Legislative Assemblies consist of different number of members varying from 90 in Quebec and Ontario to 48 in British Columbia. The relation of the Cabinet to the Legislature is similar to that prevailing in the Dominion Government.

At first the Dominion Government used to exercise the power of disallowing laws passed by provincial legislatures rather frequently.

But the older provinces carried their cases to the Judicial Committee of the Privy Council, which overthrew the decision of the Dominion Government in several cases. Now-a-days the Dominion Government seldom exercises the power of disallowance.

## X. The problem of Federal Finance in Canada

The problem of federal finance has become most acute on account of the depression and the enormous rise in the expenditure on social services. The social welfare expenses of provinces and municipalities more than doubled between 1913 and 1921, and doubled again between 1921 and 1930. With a parallel rise taking place in the costs of education, the provinces were already finding it difficult to raise the necessary revenues even before the beginning of the depression of 1929-35. When the depression broke, conditions became chaotic in even the strongest provinces. The Dominion, in order to keep the provinces from going bankrupt, was obliged to rescue them by grants representing a proportion of the provincial costs, and by loans for general purposes where these were necessary. Deficit financing by provinces on an unparalleled scale became the order of the day : revenues were deflected from the ordinary purposes of government to relief ; and business was taxed heavily.

The provinces clamoured for grants from the ampler revenue sources of the Dominion. Some provinces suggested that the percentage relationship between the subsidies giving to the provinces in 1867 and the total revenue of the Dominion should be maintained. Some put forward a claim for sharing the customs revenue of the Dominion. Other provinces demanded that the Dominion should abandon to the provinces certain taxes, such as that on incomes. Two alternative courses seemed to have been open to the Dominion—either re-allocation of sources of revenue on a uniform basis among the

provinces or the transfer of functions from the provinces to the Dominion. Both these courses, however, are unacceptable. Adoption of the first course would vastly increase the existing inequalities between the provinces. Provinces with aggregations of surplus taxable income would have their revenues adequate to cover their social, educational and developmental responsibilities. The adoption of the second course would involve a degree of centralization destructive of the Canadian Federal system.

To consider these problems in all their bearings and to suggest remedies, a Royal Commission on Dominion-Provincial Relations was appointed on August 14, 1937. The Commission made extensive enquiries for two years and a half and published its report in 1940. The Commission was asked to "express what in their opinion, subject to the retention of the distribution of legislative powers, essential to a proper carrying out of the federal system in harmony with national needs and the promotion of national unity, will best effect a balanced relationship between the financial powers and the obligations and functions of each governing body, and conduce to a more efficient, independent and economical discharge of governmental responsibilities in Canada." The Commissioners were specially charged "to examine the constitutional allocation of revenue sources and governmental burdens to the Dominion and provincial governments, the past results of such allocation and its suitability to present conditions and the conditions that are likely to prevail in the future."

*The Royal Commission (1937-40) and its form of reference*

The Commission recommends that unemployment aid should be a Dominion function. It holds that since the economic structure of the country is now fundamentally national as far as opportunities for employment are concerned, it cannot be compartmentalized for the purpose of meeting unemployment needs. Conditions which produce unemployment are in no way local; they lie in national and international trade cycles, and to some extent in climatic cycles. Therefore, burdens do not fall with equal incidence on the different provinces; and attempts by the provinces to cope with them through Dominion grants-in-aid are held to be "a mockery of responsibility in public finance." "It is fundamental to our recommendations", says the Report, "that the residual responsibility for social welfare functions should remain with the provinces and that Dominion functions should be deemed exceptions to the general rule of provincial responsibility."

*Unemployment aid*

The Commission suggests two plans with a view to effect a balanced relationship between the financial powers and obligations and functions of each governing body. The first Plan is the real plan; whereas the second one is only a make shift

by which matters would remain as they are excepting that the Dominion Government would assume the costs of unemployment relief and would grant subsidies to three provinces. Under the first Plan, "the Federal Government takes over the entire debt of each province (or 40 per cent of the combined provincial and municipal debt), it assumes full liability for the non-interest bearing debt and administers the balance, subject to the annual payment by the province of a sum equal to the annual interest received by it from these sources ; it accepts complete responsibility for the relief and care of the unemployed employables, leaving poor relief, in the proper sense of that term, to the provinces (including the municipalities) ; it replaces the present subsidies to the provinces by National Adjustment Grants to enable a provincial government to balance its budget, after maintaining its social service at an average standard, provided it is established that its rate of taxation conforms to an average Dominion level. Future borrowings by provinces are to be made on their own credit or through the Finance Commission on terms." The Provinces are asked to withdraw from certain fields of taxation which the Commission defines as national in character. These include taxes on inheritances, incomes and corporations, though the Dominion Government is required to transfer certain percentages of collection to the provinces. The Commission also recommends the setting up of a permanent body of experts called the Finance Commission, which will re-examine the amount of subsidies by the provinces every five years. The public opinion in each province is to be left free to apply the subsidy according to the needs of the province. "If the Commission's recommendations are put into effect," observes F. W. Dafoe, "the principal taxing powers will be returned to the hands of the Federal Government ; the Dominion's grants to the provinces will again be based on fiscal need, the provinces will once more be assured of revenues adequate for their essential needs without unbalancing the budget ; and the main burden of the country's finances will again rest upon the Dominion."

## CHAPTER XXVII

### THE COMMONWEALTH OF AUSTRALIA

#### I. The Country and its Constitution

The Commonwealth of Australia, consisting of six colonies of New South Wales, Victoria, Queensland, South Australia, Western Australia and Tasmania, was proclaimed on January 1, 1901. The administration of Papua was transferred to the Commonwealth in 1906 and the Antarctic territories have been placed under it in 1933. Australia is a big country, consisting of nearly 30 lakh square miles ; but it is very sparsely populated. There are only 223 persons per 100 square miles and the total population is only six and a half million. Geographically the Australian communities consist of two entities :—(1) a continental mass in the east and south-east, containing a very wide range of resources and (2) the insular areas of Tasmania and Western Australia, which have to depend on production of agricultural commodities. The two areas are separated from each other by an arid region.

Component  
parts of the  
Common-  
wealth

The motive which impelled the leaders of Australian communities to form a federation was to "achieve increased national honour and added national dignity." Asquith welcomed the establishment of the Commonwealth in the House of Commons as "A whole which we believe is destined to be greater than the sum of its component parts, and which, without draining them of any of their life, will give to them in their corporate unity, a freedom of development, a scale of interests, a dignity of stature, which, alone and separated, they could never command." It was urged that the federation would provide effective defence of Australia, adequate protection against the immigration of coloured people, safeguard Australian interests in the Pacific, and promote trade and industries by removing the customs barriers between the colonies.

Motives of  
federation

The leaders of the six colonies desired to set up a new political community, organized in the main on the British model, with a bicameral Parliament, responsible government on the cabinet system, and a Supreme Court of Appeal to interpret the new constitution, and to take the place in Australia of the Privy Council. They have succeeded in their task to a remarkable degree. There are, of course, a few points of difference between the English Constitution and the Constitution of the Commonwealth of Australia. The English Constitution is largely an unwritten one, while the Constitution of

Comparison  
with the  
British  
Constitu-  
tion

the Commonwealth is a written one. The former is unitary in character and the latter is federal by nature. The English Constitution is flexible and the Australian Constitution is rigid by nature.

The Constitution of the Commonwealth can be altered by the Commonwealth Parliament by absolute majorities and by a referendum at which the alteration must be approved by a majority of voters and a majority of States. No alteration, however, can be made diminishing the proportionate representation of any state in either house of Parliament or the minimum number of representatives of a state in the House of Representatives or increasing, diminishing or otherwise altering the limits of the state, unless the majority of the electors voting in the State approve the proposed law. Efforts to introduce great changes in the relation of the States and the Commonwealth by referendum have usually been defeated at the polls. No less than twelve proposals were negatived, in four different appeals to the country, between 1911 and 1926. In 1929 a very important change, however, has been introduced by the insertion of Section 105A into the Constitution. This Section empowers the Commonwealth to make agreements with the States with respect to state debts, including the taking-over and conversion thereof, and including future public borrowing, both by Commonwealth and States. It empowers the Commonwealth Parliament to make laws for the carrying out by the parties thereto of any such agreement; and it makes such agreements binding on the parties, when validated by the relevant Parliaments, notwithstanding anything contained in Commonwealth or State constitutions or in any Commonwealth or State law, until altered by agreement between the parties thereto.

The question of a revision of the Constitution involving imperial legislation is still unsolved. When Western Australia demanded the right of secession in 1934-35, the Joint Committee of the Imperial Parliament reported against even receiving the petition.

The life of the Commonwealth Parliament is limited to three years only as against the five years' duration of the British Parliament. The Speaker of the British House of Commons does not identify himself with any party; but the same aloofness of the Speaker is not noticeable in the Commonwealth.

## II. The Executive

The Executive power, vested in the King, is nominally exercised by the Governor-General, who is appointed by the King on the advice of the Commonwealth Government. He is thus a nominee of the Government in office. The Governor-General's functions have been reduced almost to those

Amendment  
of the  
Constitu-  
tion

Other points  
of difference  
with English  
Constitu-  
tion

The  
Governor-  
General

of a "rubber stamp" and his connection with the political side of Government has become purely formal. He must be guided in his attitude towards ministers by the same principles as that of the British King towards his cabinet.

The real executive authority is exercised by the Cabinet, which consists of the Prime Minister and ten other ministers. The Prime Minister at present holds the portfolios of the Minister of Information and Minister for the co-ordination of Defence. The other members of the Cabinet are (1) the Minister for the Navy and Minister for Commerce; (2) Postmaster-General and Minister of Health; (3) Minister for External Affairs and Industry; (4) Minister for the Army; (5) Minister for Air; (6) Minister for the Interior; (7) Treasurer, (8) Minister for Trade and Customs; (9) Vice-President of Executive Council; (10) Attorney-General.

The  
Cabinet

A Minister must be either a member of the Federal Parliament or must get himself elected to it within three months of his appointment. The Prime Minister receives a salary of £4000 per annum. The salary of other Ministers is not at all high, as the total amount of the Cabinet Fund, divided among them all, is only £16939 per year.

Position and  
salary of  
Ministers

The Prime Minister selects his own colleagues; but in the Labour Party the practice has developed of giving the caucus, and not the Prime Minister, the right to choose Ministers. This practice has given rise to the problem of divided loyalties.

Influence  
of the  
Party

The cabinet system in Australia is as much criticised as it is in England. Some critics assert that the Cabinet is extraordinarily vacillating and dilatory. King O' Malley asserted that Ministers were supposed to be "rubber stamps" in the hands of officials. It has also been argued that the Cabinet "is little more than a meeting of departmental chiefs, content to approve what permanent officials insist must be done, thereby enslaving both Cabinet and Parliament in the grip of a powerful and highly efficient bureaucracy." Political thinkers in Australia want a machinery for the working of the Cabinet system which will, at one and the same time, provide the conservative influence of the official and the vigorous detachment of the energetic Prime Minister.

Problems  
regarding  
re-organiza-  
tion of the  
Cabinet

### III. The Commonwealth Parliament

Legislative power is vested in a Federal Parliament consisting of a Senate and a House of Representatives. There must be a session of Parliament at least once every year. The Senate consists of 36 senators, six being elected from

The two  
Houses



each of the six original states. The term of a member of senate is six years, but as a rule the Senate is renewed to the extent of one-half every three years. Each state is a single electorate for voting purposes. The franchise for the senate is the same as in the House of Representatives.

The House of Representatives consists, as nearly as may be, of twice as many members as there are senators, the number chosen in the several States being in proportion to population as shown by the latest census. The present number of members is 76. The House continues for three years from the date of its first meeting, unless sooner dissolved. A voter must be either a natural born subject of the king, or have been for five years a naturalised subject under a law of the United Kingdom or of a State of the Commonwealth. Universal adult (male and female) suffrage has been established in the Commonwealth.

The Senate can not originate or amend money bills. Disagreement between the two Houses may result in dissolution of the Senate ; if the disagreement continues even after the meeting of the newly elected Senate, a joint sitting of the two Houses is held. The strength of the Upper Chamber being half of that of the House of Representatives, the opinion of the latter is bound to prevail. The position of the Senate is, thus, very much inferior to that of the House of Representatives.

#### IV. Judiciary

The judicial power of the Commonwealth is vested in a federal Supreme Court, called the High Court of Australia. It consists of a Chief Justice and five Justices, appointed by the Governor-General in Council. The Judges hold office during good behaviour. The High Court has original jurisdiction in all matters arising under treaties, between States of the Commonwealth, or affecting representatives of other countries, as well as in other matters as empowered by the Parliament. It may also hear and determine appeals from Judgements of its own Justices exercising original jurisdiction, and from Judgements of any other Federal Court, or of the Supreme Court of any State. As a rule no appeal lies to the Privy Council from the decision of the High Court regarding the limits *inter se* of the constitutional powers of the Commonwealth and those of any State or States or regarding the limits *inter se* of the constitutional powers of any two or more States. But if the High Court certifies that the case should be determined by the King in Council, then appeal may be made to the Privy Council. But the High Court on principle refuses such certificates.

## V. Relation between the Commonwealth and the States

The Commonwealth of Australia has followed the model of the U. S. A. in the distribution of powers between the Federal Government and the States. The States did not give up their full right to legislate at Federation. They gave to the Commonwealth certain specific and well-defined powers, reserving for themselves the residue of the powers then remaining. The Governors of the States are appointed by the Imperial Government and they are in no sense subordinate to the Governor-General. The Commonwealth Government can not disallow the laws passed by the State legislatures. But when the Commonwealth exercises its power over subjects of concurrent jurisdiction, the States must obey the Federal Government.

The States  
enjoy the  
residuary  
powers

The Commonwealth has powers over commerce, shipping, finance, banking, currency, etc. defence, external affairs, postal, telegraph and like services, census and statistics, weights and measures, copyright, railways, conciliation and arbitration in industrial disputes extending beyond the limits of any one State.

Federal  
subjects

The States have got equality of status in the Commonwealth. The equality of representation in the Senate is a recognition of this equality. Moreover, the Commonwealth is prohibited from granting any preferential treatment to any state by any law regarding revenue, trade or commerce.

Equality of  
States

At the time of the inauguration of the federation it was provided that the Customs and Excise, the two chief sources of revenue of the States, should be taken over by the Commonwealth, which was to return to the States, sums not less than three-quarters of the revenue derived from these sources, during the first ten years.

Financial  
relations of  
Common-  
wealth and  
the States

In 1910, the Commonwealth Parliament passed the Surplus Revenue Act, which provided for a payment to the States of 25 shillings per head of population in lieu of the three-quarters of the revenue from Customs and Excise. This also was found unsatisfactory. In 1927, the inclusion of Section 105A in the constitution empowered the Commonwealth to make agreements with the States with respect to the public debts of the States, including (a) the taking over of such debts by the Commonwealth, (b) their management; (c) the payment of interest and the provision and management of sinking funds in respect of them; (d) their consolidation, renewal, conversion and redemption; (e) the indemnification of the Commonwealth by the States in respect of debts taken over by the Commonwealth; (f) borrowing by Governments.

According to this Section the Financial Agreement Validation Act of 1929 was passed. The Agreement provides : (a) "That there shall be a Loan Council, consisting of one representative of the Commonwealth Government and one representative of each State, the Commonwealth representative having two votes and a casting vote and each State representative one vote. (b) That the Commonwealth and each State is to submit to the Loan Council from time to time a loan programme for each financial year ; and that the Loan Council is to decide how much of the total amount can be borrowed at reasonable rates and conditions, and may, by unanimous decision, allocate that sum amongst the various Governments, or, in default of such an unanimous decision, the sum available is to be apportioned between the Governments according to the formula prescribed in the Agreement (c) That the Commonwealth takes over the gross public debts of the States existing on the 30th June, 1927, and the amounts borrowed since then ; and undertake as between itself and the States all liabilities of the States to the bond-holders. (d) That the Commonwealth will continue to allow to each State the amounts of the per capita contributions which were being made in 1927 towards State revenues, and that such contributions will be credited against the interest payable on the State debts taken over by the Commonwealth ; that the Commonwealth will make certain contributions towards the sinking funds in respect of those State debts ; and that the States will pay to the Commonwealth the balance of interest and sinking fund payments required after crediting the Commonwealth contributions. (e) That as a general rule, all future borrowings, whether for the Commonwealth or the States, are to be arranged by the Commonwealth under the direction of the Loan Council, are to be covered by the issue of Commonwealth securities, are to be subject to maximum limits as to interest, brokerage, discounts and other charges fixed by the Loan Council, and are to be restricted in amount in each year to the amounts which the Loan Council determines to be available at reasonable rates."

## VI. Party system in Australia

The Labour Party is the most highly organised political party in the Commonwealth. In 1905, the Party adopted as its objectives (a) "The cultivation of an Australian sentiment, based upon the maintenance of racial purity and the development in Australia of an enlightened and self-reliant community ; (b) The securing of the full results of their industry to all producers by the collective ownership of monopolies, and the extension of the industrial and economic functions of the State and municipality."

But the Labour Party had always been divided within itself, because it gathered into its ranks a number of conflicting groups of people, such as tariff reformers, land nationalizers, small farmers, socialists and internationalists

At the commencement of the Federation there were three parties—the Free-traders, Protectionists and a small group of Labour men. In 1909, the Free-traders and Protectionists joined hands and formed the Liberal Party. In 1917, members of the Liberal Party coalesced with those members of the Labour Party, who were in favour of conscription and formed the National Party. "From the very nature," says Mr D. R. Hall, "of the composition of the present party opposed to the official Labour Party, there have been continually two conflicting sections, the old Liberals, who naturally leaned towards the doctrine of *Laissez-faire*, and the development of private enterprise, and the old Labour men who had been brought up in the opposite school, and had never shed their beliefs in the need for State ownership or State control of private ownership."

## CHAPTER XXVIII

### CONSTITUTION OF THE UNION OF SOUTH AFRICA

#### I. The Constitution

The Union of South Africa is constituted under the South African Act 1909, passed by the British Parliament. Under the terms of that Act the self-governing colonies of the Cape of Good Hope, Natal, the Transvaal and the Orange River Colony (called the Orange Free State) were united on May 31, 1910, in a legislative union under one Government. The total area of the Union is 472550 square miles and it has 19 lakhs of European and 65 lakhs of non-European population.

The Union Parliament is competent to change the constitution, though the South African Act, 1909, imposed certain restrictions on constitutional changes. These restrictions have become mostly obsolete. The Union Parliament being no longer subject to the restrictions of the Colonial Laws Validity Act, has got as much right to change the constitution of the Union by simple legislative procedure, as the British Parliament has in the case of changing the constitution of Great Britain.

In 1934, the Union Parliament passed an Act called the Status of Union Act, 1934, by which among other changes the Statute of Westminster has been implemented for the Union. The most important provision of the Act is in Section 4, which provides that "the Executive Government of the Union in regard to any aspect of its domestic or external affairs is vested in the King, acting on the advice of his Ministers of State for the Union and may be administered by his Majesty in person or by a Governor-General as his representative." After the passing of the Act, General Hertzog declared that South Africa was so free and independent that she could select the King of the Belgians as her King. The implication of the clause lies in the fact that it takes away all check on the powers of the Ministry which has the support of Parliament for the time being. The Ministry can, under the Status of Union Act, (1) "sweep away the Cape Franchise which under the Status measure ceases to be effectively safeguarded in any way ; (2) abolish the provinces, (3) extend the duration of Parliament, thus depriving the electorate of the power of control of its representatives ; and (4) declare the secession of the Union from the Empire."

(Dr. Keith's letter in the Natal Mercury, 16th April 1934). Dr. Keith further observes that "no such unfettered authority exists in any part of the Commonwealth and the new constitution thus differs essentially from the British Constitution." But it may be pointed out that fundamental principles of the British Constitution may be changed by a ministry, having a stable majority in the House of Commons. For the king's veto power has fallen into disuse and the Parliament Act of 1911 has made the opposition of the House of Lords ineffective in case a reform is persistently demanded by the House of Commons.

The Status of Union Act has brought about a fundamental distinction between the position of Canada and Australia on the one hand and the Union of South Africa on the other. The former Dominions have no legal power to declare neutrality or secession, whereas the Union has the legal power now. If Britain is at war Canada and Australia are also at war *ipso facto*. The Union, however, can declare neutrality and may sell goods to the nation with whom Great Britain is at war. Such a declaration of neutrality might prove most damaging to British schemes of naval operations, for the British Fleet cannot use Simonstown as a base without violation of that neutrality. On the declaration of the present War (1939), General Hartzog advocated a policy of neutrality ; but he was outvoted in the legislature and resigned. The Union has declared war against Germany, thus making common cause with Great Britain.

Position of  
the Union  
in case  
of war

## II. Relation between the Union and the Provinces

The Union of South Africa differs fundamentally from the federal arrangements of Canada. The provinces of Canada enjoy considerable power free from the interference of the Dominion Government. But the provinces of the Union are entirely subject to the Union Government. The cause of this difference in the status of the provinces of the two Dominions is that there is federalism in Canada, but unitary Government in the Union of South Africa. The Governor-General in Council of the Union appoints an Administrator who is the head of the provincial executive. The Administrator exercises a definite control over provincial finance ; for no appropriation, whether of money raised by provincial taxation or of Union grants, can be made, save on his recommendation to the Council. The Administrator must act with a Committee of four persons appointed by proportional representation. He presides over the meeting of the Committee. These facts show that the provincial Administrator has real power, and is not a figure-head like the Lieutenant-Governor of a Canadian Province ;

Unitary  
government  
in South  
Africa

but the Administrator is much more dependent on the Union Government than the Lieutenant-Governor is on the Dominion Government.

The Provinces of the Union have authority to deal with local matters such as provincial finance, primary education, charity, municipal institutions, local works, roads and bridges, markets, fish and game, and penalties for breaches of laws respecting such subjects. The provinces may have also Jurisdiction in other matters which, in the opinion of the Union Government, are of merely local or private nature in the province, or in respect of which Parliament may delegate the power of legislation.

The general power of direct taxation conceded to the Provinces in 1909 has been taken away in 1921. The provinces have been given the right to levy hospital and education fees, and licence fees for dog, sporting, motor, flower-picking and game licences. They are also empowered to raise auction dues, taxes on vehicles, amusements, betting, personal income and company receipts on defined conditions, the ownership of immovable property and to impose licence dues on the right to import non-Union goods for sale. Besides these, the provinces receive subsidies from the Union.

On the passing of the Status of Union Act the provinces became anxious for their very existence. Hence, the Act of 1909 was amended in 1934 to provide that no alteration in provincial boundaries or abolition of any Council or abridgment of its power should be carried out except on the petition of the Council. But the Union Ministry was of opinion that this Act has no binding force except as an expression of what was considered desirable as a constitutional doctrine.

### III. The Union Executive

The Status of Union Act has made the Governor-General a mere figure-head. The Governor-General has, indeed, the right to dismiss Ministers, but such a right is meaningless as a safeguard. He is a nominee of the Ministry, and Mr. De Valera has established in the Irish Free State in 1932 the right of the Ministry to remove from office the Governor-General who is not desirable.

The Cabinet consists of eleven members besides the Prime Minister. The Cabinet has powers and responsibilities equal to those of the British Cabinet.

#### IV. The Union Legislature

The Union Parliament consists of the King, a Senate and a House of Assembly. The Senate consists of forty members, of whom 32 are elected (eight for each province) and eight are nominated by the Governor-General. <sup>The Senate</sup> Of these eight, four are selected mainly for their acquaintance with the reasonable wants and wishes of the non-European races. Each Senator must be a British subject of European descent, at least 30 years of age, qualified as a voter in one of the provinces and resident for five years within the Union. Moreover, an elected senator must be a registered owner of property of the value of £500 clear. The provincial representatives in the Senate are elected by the members of the provincial Councils and the provincial representatives in the Senate are elected by the members of the provincial Councils and the provincial representatives in the Assembly sitting together. The term of office of an elected senator is ten years, but the Senate may be dissolved within 120 days of the Assembly. Nominated senators vacate office on a change of Prime Minister.

According to the redistribution scheme of 1934, the Assembly has 150 members, of whom 61 are elected by the Cape, 16 by Natal, 57 by the Transvaal, and 16 by the Orange Free State. Suffrage has been conceded to females above 21 years of age in 1930. An Act of 1931 has extended <sup>The Legislative Assembly</sup> the franchise to all males of European, or white extraction over the age of 21, thus removing the property and wage qualifications existing in the Cape and Natal provinces. In the Transvaal and Orange Free State non-Europeans have no vote; in Natal the African natives and British Indians are debarred from voting, and in the Cape educational and property qualifications are required of non-Europeans. There must be a session of Parliament every year. Members of the Assembly are returned by single-member constituencies. The Assembly continues for five years from the date of its first meeting unless sooner dissolved.

The Senate has no financial initiative, except as regards the imposition or appropriation of fines or penalties. It may not amend any Bill so as to increase any proposed charges or burden on the people, nor any Bill so far <sup>Powers of the Senate</sup> as it imposes taxation, or appropriate revenue or moneys for the service of the Government. It can reject measures which it cannot amend. If a Bill is passed in the Assembly in two successive sessions, and rejected twice by the Senate, the Governor-General may convene a joint sitting, when the Bill may be passed if approved by a majority of



the total number of members of both Houses. If, however, the Bill deals with the appropriation of revenue or moneys for the public service, the joint sitting may be held in the same session as the rejection. The weakness and inferiority of the Senate is apparent from the fact that it has only 40 members, while the Assembly has 150 members and thus in a joint sitting the Senate will have very little influence.

## V. Judiciary

The Union has a Supreme Court, which consists of an Appellate Division with a chief justice and four judges of appeal. In each province there is a Provincial Division of the Supreme Court. The judges appointed since 1912 hold office till they attain the age of 70 years. No judge can be removed from office except by resolution of Parliament. The Common Law of the Union is the Roman Dutch Law. The decisions of the Appellate Division of the Supreme Court are final save in so far as an appeal may be permitted by special leave to the King in Council. But the Judicial Committee does not encourage such appeals.

Supreme  
Court and  
Provincial  
courts

## VI. The Native problem in the Union

The framework of African society has been shattered by the conquest of European peoples. The Bantus have a fine legacy of co-operative tribal traditions; and the task of the Western settlers is to build anew the social structure of the natives on an assimilation of this legacy with the elements of western culture. The policy hitherto followed by the Union Government has been one of segregation in native Reserves. "What in its crudest form does this policy of segregation mean?" asked Jan Hofmeyr in his book, "South Africa" (Modern World Series, 1930). "Nothing more than the exclusion of the native from the white man's life, save in so far as he is necessary for ministrations to the white man's needs, the setting aside for his occupation of land so inadequate that dire necessity will drive him out to labour for the white man, the refusal to regard him as other than a means to an end, or effectively to discourage his development as an end in itself." Such a policy is producing unrest among the natives. The problem may assume formidable dimensions in view of the fact that the interests of five million Bantu natives has been made subordinate to those of less than a third of that number of Europeans.

Gravity of  
the problem

## CHAPTER XXIX

### THE CONSTITUTION OF EIRE (IRELAND)

#### I. A Free Sovereign State

The position of the Irish Free State within the British Empire was defined by the Treaty of December, 1921. Article I of the Treaty declared that "Ireland shall have the same constitutional status in the community of nations known as the British Empire, as the Dominion of Canada, the Commonwealth of Australia, Dominion of New Zealand and the Union of South Africa, with a Parliament having powers to make laws for the peace, order, and good government of Ireland, and an executive responsible to that Parliament, and shall be styled and known as the Irish Free State." The old Constitution of the Irish Free State asserted that the State forms part of the British Commonwealth of Nations.

Status of  
the Free  
State up to  
1937

On June 14, 1937, a new Constitution was approved by the Irish Parliament and enacted by the people by means of a plebiscite on July 1, 1937. The Constitution came into operation on December 29, 1937. The Constitution declares that Ireland is a sovereign, independent democratic state. It affirms the alienable, indefeasible and sovereign right of the Irish nation to choose its own form of government, to determine its relations with other nations and to develop its life, political, economic and cultural in accordance with its own genius and tradition. The significance of the omission of all reference to the British Crown in the Constitution is that the Government of the Eire will conclude treaties with foreign powers and make diplomatic appointments. It may remain neutral even when the British Government is at war with a foreign power. It has actually remained neutral up till now in the present War (May, 1941). The Irish Parliament alone is authorised to declare war, though the Irish Government may take measures to meet attack pending the assembling of the Parliament. The Government is further empowered to make treaties which do not involve a charge on public funds.

Omission  
of reference  
to the  
Crown

The preamble to the new Constitution leaves no doubt as to the Sovereignty of the Irish State. It reads as follows: "In the name of the most Holy Trinity from whom is all authority and to whom as our final end all actions both of men and states must be referred, we, the people of the Eire, humbly acknowledging all our obligations to our Divine

Full  
sovereignty  
of the Eire

Lord Jesus Christ, who sustained our fathers through centuries of trial gratefully remembering their heroic and unremitting struggle to regain the rightful independence of nation and seeking to promote the common good with due observance of prudence, justice and charity, so that the dignity and freedom of the individual may be assured, true social order attained, the unity of our country restored, and concord established with other nations, do hereby adopt, enact and give to ourselves this constitution."

It should be noted that this is not a sudden move on the part of De Valera, who has always advocated a complete break with England. He held that the British connection was fatal to the spirit of Ireland, because the Irish are Catholic and agricultural, whereas the English profess materialism and industrialism. The British subjects are already classed as aliens in the Irish Free State, though they are relieved of the disabilities of aliens by order of the Executive Council. He refused to take the oath to the King, forced the resignation of the Governor-General and secured the appointment of a retired village grocer in his stead. In December 1936, on Edward VIII's abdication he showed the unmistakable trend of his policy by passing an Act which abolished the post of Governor-General and omitted to mention the King in the Constitution.

It is a  
logical  
consequence  
of De  
Valera's  
policy

## II. The Executive

The Governor-General is substituted by a President, directly elected by popular vote for a term of seven years. He is the head of the executive and the titular Commander-in-Chief. Being elected by the people directly he is in a position to exercise enormous influence. He is assisted, but not controlled by a new kind of Privy Council, in which there are rival political leaders, judges, and other distinguished citizens. The President has no right to dismiss a Ministry which commands the support of the Dail (Chamber of Deputies or Lower House) but he may refuse a dissolution to a Prime Minister who has ceased to command a majority in the Dail. He is endowed with Powers to safeguard the Dictatorial power of the President Constitution. He may refer to the Supreme Court any bill which he deems repugnant to the Constitution and if it reports that the bill is unconstitutional, he is required to refuse his signature to the measure. If a majority of the Senate and a third of the Dail request him to refuse assent to a bill of national importance, he may refer it to a referendum or general election.

Thus, it will be seen that the Irish President is far more

powerful than the French President, though his powers fall far short of those of the President of the U. S. A. The Prime Minister is not responsible to him, but he may be a rival in popular esteem to the Prime Minister.

Relation  
with the  
Prime  
Minister

The Prime Minister, like his British prototype selects and controls his colleagues. He can advise the President to dissolve the Dail regardless of the advice of other ministers, so long as he is able to maintain his parliamentary majority. If he fails to advise the President to summon the Dail, the latter might convene it. In case the Prime Minister refuse to resign even when he is defeated, the President shall dismiss him.

Powers  
of the  
Prime  
Minister

### III. The Legislature

The Irish Parliament consists of two Houses, viz., a House of Representatives called Dail Eireann, and a Senate, consisting of sixty members. Of these sixty members of the Senate, the Prime Minister nominates eleven, six are elected by the universities, and the remaining 43 are elected from five panels of candidates established on a vocational basis, representing the following public services and interests: (1) National Language and Culture, Literature, Art, Education and such other professional interests; (2) Agriculture and allied interests, and Fisheries; (3) Labour, whether organised or unorganised; (4) Industry and Commerce including banking, finance, accountancy, engineering and architecture; (5) Public administration and social service, including voluntary social activities. The Senate can exercise a suspensive veto for ninety days only over bills passed by the Lower Chamber. It does not control the executive, which is responsible to the Dail only. The Dail Eireann, consisting at present of 138 members, is elected by adult suffrage by a system of proportional representation. It is the real depository of power.

Bicameral  
Legislature

### IV. The Constitution

The Constitution can be amended within a period of three years after the President has taken up office, by ordinary process of law-making, but any proposal which the President considers important will be referred to the people in Referendum. After the first three years no amendment of the Constitution can be effected except with the approval of the people given at a Referendum.

Process of  
amending  
the Consti-  
tution

A very important feature of the proposed Constitution is that which makes it applicable to all Ireland whenever territorial

reintegration is achieved. It thereby empowers the Government and Parliament of Eire to exercise jurisdiction over the whole of "national territory", including Ulster. <sup>Position of</sup> <sup>Ulster</sup> "Happily there is clear intimation," observes Prof. A. B. Keith, "that there is no intention to make use of the right, but the assertion of the claim, coupled with the omission of acceptance of membership of the British Commonwealth, must be justly resented by Northern Ireland."

## CHAPTER XXX

### THE FRENCH CONSTITUTION\*

#### I. Characteristics of the French Constitution

The present Constitution of France was set up by the Constituent Assembly in 1875. France has been called the "laboratory of constitutional experiments"; because between 1789 and 1875 she adopted and rejected nearly a dozen Constitutions. All these Constitutions were complete in details, but the least revolution had proved sufficient to overthrow each and every one of them. The Constitution of 1875, however, is of an unsystematic and fragmentary character, while the Constitution of the U. S. A. is a single document. The French Constitution is contained in three Constitutional laws passed on February 24 and 26 and July 16, 1875 respectively. The French Constitution, unlike the English Constitution, has been made and not been evolved in course of time. But like the English Constitution it precludes neither precedent nor growth. And this freedom has undoubtedly been the basis of the health and strength of this Constitution as compared with the manifold Constitutions that preceded it.

Constitution of 1875

The French as well as the English Governments are described as of Parliamentary type. But the English Parliament is quite unfettered in making any law it likes, while some restrictions have been placed on the French Parliament. It cannot change the Constitution by the ordinary procedure of law-making. According to the Amendment of 1884, even the joint session of the Senate and Chamber of Deputies which is empowered to change the Constitution, cannot abolish the Republican form of government.

Republican form of Government must be retained

The English Constitution is a flexible one but the French Constitution is characterised by modified rigidity. The French Constitution can be changed by the following procedure. The Senate and the Chamber of Deputies must meet separately, either on its own motion or at the request of the President and declare by an absolute majority, the need for a revision of the constitutional laws. Then the two Chambers would sit together in one body as a National Assembly and pass or reject the proposal. The amendment will become a part of the Constitution, if the absolute majority of the members of the Assembly, whether they cast a vote or not, are in

Rigidity of the Constitution

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\* The Constitution described here is now suspended. France is now divided into two parts—occupied and unoccupied France. Unoccupied France is being governed by a Cabinet at the head of which is Marshall Petain. Democracy has ceased to exist in France since June, 1940.

favour of it. Such a procedure can not bring a revolutionary change in the Constitution, because the National Assembly, being composed of Deputies and Senators cannot be expected to make such changes as would deprive them of spoils in future. There have been only three amendments to the Constitution of 1875 and none of these are of any fundamental character.

In England every citizen, be he an official or non-official, is subject to the same tribunal. In France there is a separate court named the Administrative Court for trying government servants acting in their official capacity.

Adminis-  
trative  
Court

## II. The French President

The formal head of the French Executive is the President. He is elected for seven years by the two Chambers of the Legislature meeting in joint session. He is re-eligible for any number of terms. According to the law of 1928, he receives an annual salary of 18 lakh francs, plus 9 lakh francs for house-hold expenses plus another 9 lakhs for entertainment and travelling expenses. All these put together mean about 2 lakh 80 thousand rupees at the present rate of exchange. As the head of the Executive, the command over Army and Navy, conduct of foreign policy, appointment, pardon, right of passing laws concurrently with members of the Chambers, power of dissolving the Chamber of Deputies with the consent of the Senate, power to summon the Chambers to meet in extraordinary session, right of addressing message to the Chambers through somebody, power to adjourn the Chambers for a month, power to require the Chambers to deliberate afresh upon a law they have passed, are entrusted to him. Unlike the English King and the American President he has no power to veto a law.

Formal  
powers  
of the  
President

All these powers, except those of merely ceremonial nature are exercised by or through his ministers, by one of whom every one of his acts must be countersigned. In this respect his position is similar to that of the English King. He is personally irresponsible and not legally removable by a vote of the Chambers, though they can practically make it difficult for him to retain office. But the Chamber of Deputies may accuse him of high treason, in which case he would be tried by the Senate, and would, if convicted, be deposed from office. The Ministers are responsible for executive acts to the Chambers and not the President.

Real powers

The President performs two very important functions. He personifies the unity of the State. Like the English King he advises the ministers in their conduct of public business. Like the King again, he refrains from attending the Cabinet meetings, but unlike him the President attends

Utility  
of the  
President

the meetings of the Council of ministers twice or thrice a week. He can thus indirectly influence the Government, though his vote is not counted for final decision. He designates the Prime Minister out of the leaders of a dozen political groups in Parliament, when a Cabinet has been overthrown. Much depends on the personal likes and dislikes of the President. When a new President is elected the old Cabinet resigns to give him an opportunity of nominating a Cabinet of his own choice. But he does not usually choose a person as Premier who has no chance of securing a workable majority in Parliament.

The American President is directly elected by the people, while the French President is elected by the Legislature. This difference in method of appointment largely explains why the former is so strong and the latter so weak. The President of the U. S. A. is independent of the Legislature and able to resist it, while the French President has very little power to oppose the French Legislature. The Ministers in the U. S. A. are the servants of the President of the U. S. A., while the Ministers in France are responsible to the Legislature. In comparing the French President with the English King and the American President, Sir Henry Maine has observed :—"There is no living functionary who occupies a more pitiable position than a French President. The old king of France reigned and governed. The constitutional king, according to M. Thiers, reigns but does not govern. The President of the United States governs but does not reign. It has been reserved for the President of the French Republic neither to reign nor to govern." But according to Barthou, the French President is not a phantom king without a crown. He can make his influence felt by means of active advice. The Ministers usually consider his advice with the greatest attention and respect because of his position and experience.

The French President has shadow powers

### III. The French Ministry

The President of the Republic is the titular head of the Executive, but the real head is the Prime Minister, who is also the President of the Council of Ministers. In theory, a Minister need not be a member either of the Chamber of Deputies or of the Senate; but in practice, Ministers are usually taken from the ranks of Deputies and Senators. But Ministers of War and Marine have often been chosen from among generals and admirals, who are not members of Legislature. In England there are three different grades of salary for Ministers, but in France every Minister draws an annual salary of 180,000 francs, plus an allowance of 40,000 francs for the maintenance

Difference between the English Ministry and the French Ministry



of their official automobile, that is, in all about Rs.1400 per month. Though the salary is the same, yet the position and importance of all Ministers are not equal. The Prime Minister enjoys the largest amount of power ; below him is the Minister of Justice, who acts also as Vice-President of the Council of Ministers and President of the Council of State and of the Tribunal of Conflicts. The Ministers of Foreign Affairs, of the Interior and Finance are next in importance. The Ministers of Education, War, Marine and Agriculture are also important because they have large patronage in their hands. The portfolios of Commerce, Labour, and Public Health are of lesser importance. There may be some ministers without portfolio. There is no fixed limit to the number of ministers. As in the case of the Provinces in India the number depends on the necessity of satisfying different groups. Thus, Tardieu appointed 28 members to his Cabinet in November 1929 against the 18 members in the preceding Briand Government. An individual minister in France is much more powerful than a minister in England in his relation to the Prime Minister. A minister not unoften intrigues against the Prime Minister. Another peculiarity of the French Ministry is that after the fall of a Cabinet, ministers belonging to it take office in the succeeding Cabinet. When the Daladier Cabinet fell in October 1933, Sarraut, a minister of this Cabinet formed a new Government of 18 ministers with twelve ministers of the Daladier Cabinet. On the resignation of a Ministry a general election does not follow. If France were involved in the turmoil of a general election everytime a Cabinet fell, Democracy would have long since broken down there.

In England the Ministry is responsible to the House of Commons only ; it does not resign on an adverse vote of the House of Lords. But in France the Senate can reverse a Ministry as it did the Bourgeois Ministry in 1896, Briand Ministry in 1913, Heriot Ministry in 1925, Tardieu Ministry in 1930, Laval Ministry in 1932, and Blum Ministry in 1937 and again in 1938.

In recent years a number of Under-Secretaries have been appointed to assist the ministers. The Under-Secretaries cannot countersign a Presidential act ; nor are they entitled to attend all Cabinet meetings. But they are responsible to the Legislature. In 1930 Tardieu appointed as many as fifteen Under-Secretaries.

A formal distinction is made in France between the Council of Ministers and Cabinet Council. When the ministers meet formally as the Council of Ministers, the President of the Republic acts as Chairman of the Council, though he cannot vote. The ministers may also

The Council  
of Ministers  
and the  
Cabinet

meet informally without the President of the Republic, in which case they are said to meet as the Cabinet Council. The President of the Council of Ministers, who is invariably the Prime Minister presides over the Cabinet Council. "The Cabinet Council," observed a French Minister humorously, "is a place where you may smoke ; the Council of Ministers is a place where you may not smoke." The Cabinet is unknown to law, while the Council of Ministers is a body recognised by law. Finer points out that the Council of Ministers deliberates on policy and is national in character ; while the Cabinet deliberates on tactics and is parliamentary in character. The members of the Council of Ministers are ex-officio members of the Council of State, which is the highest judicial tribunal in France for the trial of administrative cases. The Council exercises the functions of the President of the Republic in case of his death, resignation or incapacity for action until the National Assembly can meet and elect his successor.

Every act of the President is countersigned by the Minister with whose department the act is concerned. The Constitution, further lays down that "the Ministers shall be collectively responsible to the Chambers for the general <sup>Responsibility of Ministers</sup> policy of the Government and individually for their personal acts." But the ministers joining a Cabinet do not repudiate their life-long doctrines ; hence there is very little of homogeneity in the Cabinet. Finer opines that political practice has virtually deleted the words 'collectively responsible' from the Constitution. In three different ways the responsibility of ministers to both the Houses of the Legislature is enforced. First, questions are asked in the Chamber of Deputies concerning the action of a minister with his previous consent. Questions may be asked orally, from the floor, and when they are answered by a minister, the Deputy asking the question has the right to reply ; but no further debate is allowed. Questions may also be asked in writing, in which case the answer must be published in the Journal Officiel within eight days. Secondly, Interpellations may be addressed to a minister. An Interpellation differs from the ordinary question in that it gives cause for a general debate, in which everyone has the right to participate. If a member wants to address an Interpellation he must apply in writing to the President of his Chamber stating the substance of his Interpellation. The President reads the demand to the Chamber, after which the minister concerned gives a reply. Then the House decides upon the date when the Interpellation will be discussed. The discussion is closed by a vote known as *Ordre du Jour* (Order of the day), in which the House expresses its confidence or no-confidence in the Government. If the Chamber passes an *Ordre du Jour* of no-confidence, the Government is forced to resign.

This is the normal and frequent procedure by which French Ministries fall from power. Thirdly, each Chamber may appoint its investigating Committees with the object of collecting information regarding the action of a Ministry. Such Committees have been granted the powers appertaining to investigating magistrates by a law of 1914.

The French Prime Minister presides over the Cabinet Council, holds the Ministry together, tries to manage the Legislature as best he can, and makes great efforts to retain his popularity in the country. His task is much more difficult than that of the English Prime Minister, because he is never sure of the support of the Groups which have promised to help him. The French Premier has to attend international conferences too. He can at any time act in place of one of his ministers. In recent years a tendency to relieve the Prime Minister of the charge of any particular department has been noticeable. Thus, Poincaré in 1928, Doumergue and Flandin in 1934, Blum in 1936-37, and Chautemps in 1937-38 did not hold any portfolio.

Position of  
the French  
Premier

#### IV. Causes of Ministerial Instability in France

Ministries in France are notoriously unstable. Since the foundation of the Republic, sixty-nine years ago (1871-1940),

France has had one hundred and five different Cabinets. Thus, the average life of a Cabinet has been less than seven months. The longest Ministry was that of Waldeck-Rousseau which lasted for two years, eleven months and eleven days (June 22, 1899 to June 3, 1902). The shortest Ministry was that of Camille Chautemps in 1930 which lasted for twenty-four hours. The causes which contribute to the instability of a Ministry in France are mainly five—namely, powerlessness of the Cabinet to dissolve Parliament; the existence of a multiplicity of groups, the prevalence of Interpellation; responsibility of the Cabinet to both the Houses; and great powers of the Commissions.

In England when the Cabinet feels that the House of Commons does not represent the Nation, it may bring about the dissolution of the House and order a general election. In France the President of the Republic can dissolve the Chamber, before the expiry of its legal term, only with the consent of the Senate. But the only instance of dissolution is to be found in 1877 when Marshall MacMahon dissolved the Chamber in the hope that the new elections would be more conservative. A dissolution is generally regarded as a *Coup d'état*; hence no other President has exer-

Short-lived  
Ministries

Cabinet has  
no power  
to dissolve  
the Chamber

cised this power, nor has the Senate ever again given consent to it. As the Government of the day is deprived of the weapon of appealing to the country from the factious opposition of the Chamber, real political power is thrown into the hands of any group, which might at any time hold the balance of power.

The multiple party system in France prevents the growth of a single party which can command a majority in the Legislature. The formation of diverse groups is promoted by the fact that the Cabinet has no power to compel a group to choose between loyalty to it and a general election. <sup>Evils of the Group system</sup> If fifteen or twenty members form themselves into a group, they can become the arbiter of the fate of Government. The Cabinet tries to secure the adhesion of as many groups as possible. Every Government is a combination in which principle plays very little part. "Ministers, not feeling any solid strength behind them," states Jules Roche, "desiring to live, seeing themselves at the mercy of the Chamber of Deputies, never dare to be themselves, to defend what they think it most just, and fight what they believe to be bad and dangerous. They try above all to get the favour of the majority." But they cannot live long by sacrificing principles to political expediency. As soon as the Government makes a concession to one Group, other Groups become greedy and if the Cabinet tries to satisfy them, others become estranged from it. Besides its declared adversaries, the Government has to face attacks of those of its supporters who have the ambition of becoming ministers in the next Government. By desertion they perhaps find their way into the incoming Cabinet. A French Cabinet is generally formed by reshuffling the out-going Cabinet. This fact is mainly responsible for the loose party discipline in France.

Interpellations are so ingeniously and surreptitiously put that the minister to whose department they may relate is often discredited. They are not restricted to Fridays on matters of confidence in the Government. The Cabinet cannot control the time of discussion. It goes out of office whenever a vote of no-confidence is passed as the result of an Interpellation. <sup>Interpellations</sup>

The Chamber of Deputies arrogates to itself the right of interfering not only with the general policy but also with the minute details of administration. As the ministers have no stable majority to support them, they are often put to great disadvantage. <sup>Responsibility to both the Houses</sup> Besides this, the Senate also enforces its authority on the working of the Cabinet in various ways. Thus, between double responsibilities, the ministry is often discredited and eventually ousted.

The practice of appointing Commissions with ex-ministers and

experienced Deputies and Senators as members and investing them with large powers also contribute to the instability of a Ministry in France. "They weaken the Ministers," observes Finer, "because they are powerful rivals and the Chambers look to them for guidance, whereas, in England, the sources of inspiration are purely Ministerial. Moreover, they are the Deputies and Senators organized as continuous guilds, and they always act as prosecuting attorneys and professional defensive societies, towards Ministers." They are entitled to call for any information from the departments and are thus able to prepare the ground for the defeat of Ministers.

The Com-  
missions

## V. The Senate

The Senate is the Upper House of the French Legislature. Before the Great War it consisted of 300 members, elected in the 86 Departments (districts) of France, in Algeria, in the territory of Belfort and in the colonies by Electoral Colleges. To this have been added after the War 14 members for Alsace-Lorraine, making 314 Senators in all. The Senators are elected by an Electoral College in each Department or Colony meeting at the capital of the Department or Colony. The Electoral College consists of (a) the Deputies of the Department; (b) the members of the General Council of the Department; (c) the members of the Arrondissement (subdivisions) Councils within each Department and (d) the delegates of the Communes within each Department. Communes having population between 500 and 1500 are allowed to send 1 delegate to the Electoral College. The larger Communes are represented by a large number of delegates, those having 60,000 and above send 24 delegates, while Paris sends 30 delegates. As the Communes number 36,000 they have got the preponderent voice in the election of Senators. No one can be a Senator unless he is a French citizen of at least forty years of age and enjoys civil and political rights. As the mode of election is indirect and the age qualification is high, most Senators are recruited from among sedate local politicians. Senators are elected for a nine-year term. Elections to the Senate take place every three years, one third of the Senate body being elected at a time.

Number,  
mode of  
election and  
term of  
Senators

The legislative powers of the Senate are equal to those of the Chamber of Deputies except as regards the financial bills. The Senate is more conservative by temperament than the Chamber of Deputies. It performs the function of resisting hasty legislation admirably well. Bills usually originate in the Lower Chamber, though there is no definite law about it. The Chamber of Deputies, however, has no power to compel the Senate to discuss a bill. If the

Powers of  
the Senate  
in law-  
making

Senate does not like a particular bill, it will simply bury the bill in silence. It has very often sent the bills, passed by the Lower House "into no man's land of a Commission whence, the only despatch concerning them is, missing."

The method of settling quarrels between the two Houses as provided in the Constitution is not at all satisfactory. A conference between two "Commissions", one appointed by each House debates together the points at issue between the two Houses but they vote separately. If this method fails to bring an agreement, nothing further can be done.

Mode of settling differences between the two Houses

Money bills must originate in the Chamber of Deputies, but the Senate can amend them by way of rejecting or reducing items of taxation or appropriation. Though it can reduce taxes or supplies, yet its power of increasing them is weak. The Chamber of Deputies purposely keeps back the Budget of the year till the latest possible moment, so as to leave the Senate no time for consideration and amendment unless it takes upon itself the responsibility of driving the Ministry—to a provisional levy of taxation needing to be subsequently confirmed. Like the House of Lords the French Senate has been hostile to all schemes of taxation of socialistic kind.

Power over finance

The Senate now controls the administration as much as the Chamber of Deputies. During the first twenty years of the Constitution the Senate did not attempt to drive out a Ministry by a vote of no-confidence. But as has been pointed out before, there have recently been many cases in which the Senate has dislodged Ministries from power. Most of the members of the Cabinet are taken from the Chamber of Deputies. But ministers may appear in either House to explain the policy or to answer questions.

The Senate possesses two special powers. No dissolution of the Chamber of Deputies before the expiry of its statutory term can take place without the consent of the Senate. It sits as a High Court of Justice when summoned to act as such by the President for the trial of grave offences against the state.\*

Special powers of the Senate

## VI. The Chamber of Deputies

The Chamber of Deputies is elected by adult (21) male suffrage, women having no franchise in France. A person who has been a resident in a Commune for at least six months prior

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\*On October 28, 1938 when one-third of the Senate was re-elected the position of Parties in the Senate was . Socialists and Communists, 17 , Democrats of the Left, 152 , Republican Union, 69 ; Action Republicaine Nationale et Sociale, 16 ; Democratic Union, 27 ; Independents, 38.

to the compilation of voters' list becomes a voter in that Commune. No property or educational qualification is required for a voter, and no plural voting, as in England, is allowed. A Deputy must be of at least 25 years of age. No member of families which have reigned in France can become candidate for Deputyship; nor are men in active military service are eligible. There is also a long list of civil servants who are debarred from offering themselves as candidates in the constituency in which they hold a public office. The chamber is elected for four years and the general election must take place within sixty days preceding the expiry of the full term. Between 1919 and 1927 Deputies were elected in multi-member constituencies, but now they are elected by "Scrutin d' Arrondissement" or single-member constituencies.

The ordinary Session of the Chamber opens on the second Tuesday of January and lasts up to the middle of July. There is also an extra-ordinary session from October to December. Parliament has also to meet two days after martial law is declared without any call from the executive. The President of the Republic is bound to call a session when the absolute majority in each house asks for such a session. The Government also can convene a session whenever it pleases.

The Deputies are organised in different groups, which are classified into Right, Centre and Left, according to their seating arrangement. On the first January, 1937, the groups were as follows :

|                                      |  |           |
|--------------------------------------|--|-----------|
| <b>Groups<br/>in the<br/>Chamber</b> | <b>Right</b>   |           |
|                                      | Independants d' Union Republicaine et Nationale                  | 4         |
|                                      | Independants Republicains  | 12        |
|                                      | Federation Republicaine de France                                | 58        |
|                                      | Parti Social Francais  | 8         |
|                                      | Republicains Independants et d' Action Sociale                   | 27        |
|                                      | Groupe Agraire Independant                                       | 11        |
|                                      | Groupe Independant d' Action Populaire                           | 15        |
|                                      |  | <hr/> 180 |
|                                      | <b>Centre</b>  |           |
|                                      | Democrates Populaires  | 18        |
|                                      | Alliance des Republicains de Ganche et des Radicaux Independants | 41        |
|                                      | Ganche Democratique et Radicaux Independants                     | 36        |
|                                      |  | <hr/> 90  |
|                                      | <b>Left</b>  |           |
|                                      | Radicaux et Radicaux-Socialistes                                 | 113       |
|                                      | Ganche Independante  | 27        |
|                                      | Union Socialiste et Republicaine                                 | 29        |
|                                      | Socialiste S. F. I. O.   | 149       |
|                                      | Communistes  | 72        |
|                                      |  | <hr/> 390 |
| Unaffiliated                         |  | 6         |
| <b>Total number of members</b>       |  | <hr/> 616 |

In October, 1939, the Communist members were expelled from the Chamber of Deputies.

The Chamber of Deputies exercises strict control over administration and legislation through its committees, called Bureau. The Committee can enquire into all the work of a Department and recommend or refuse the measures the Department desires. Such an interference from the Committee necessarily reduces the authority of the Ministry, for its bills may be so much altered by the Committee that they might be quite different from what the Ministry intended them to be. It exercises three functions:—(1) making of laws, (2) criticism of the executive of Departments and (3) displacement of Ministries. The last function makes the French Deputy much more powerful than the English M. P.

It has been well said that "three Powers rule France—the Deputies, the Ministers and the Local Party Committee." The governing function of the Ministers needs no explanation. The Deputies rule France by exercising great influence through the Bureau and by inspiring fear in the mind of Ministers lest they should vote against Ministry. The Local Committees are like cliques consisting of minor officials or ex-officials, shop-keepers, lawyers, doctors, teachers and journalists. The Deputy must please the clique and press the Minister and the Prefect (head of the local administration) for granting this or that favour for the clique. The bulk of the people are less attached to this or that party than they are in English-speaking countries. Hence, the clique can work for this or that candidate, and the successful candidate must keep the clique satisfied.

The National Assembly of France is, in fact, the sovereign body. It consists of a joint meeting of the Legislature, namely, the Senate and the Chamber of Deputies. The purpose of holding the National Assembly which assembles in Versailles is to elect the President of the French Republic or to consider a revision or amendment of the Constitution. It is only when both the Houses individually agree to an amendment by an absolute majority that the National Assembly is summoned. The powers of this Assembly to revise or to amend the Constitution are very wide excepting that no change of the republican form of government can be attempted. By this Assembly the President is elected by an absolute majority. Thus it is evident that the French Legislature is the judge of its own actions; while in America the Judiciary is entitled to consider the validity of the laws of the land.



## VII. Parliamentary Procedure in France

Parliamentary procedure in France differs considerably from that of England. In France the closing of a parliamentary session has no influence on the legislative procedure. In England if the session ends before a bill has been voted all the preparatory work is done over again in the new session ; but in France bills which have not been voted before the end of a session will be voted during the coming session.

**Peculiarities  
of French  
procedure**

Moreover, voting by proxy is allowed in the Chamber of Deputies. Those members of a group who are present in the Chamber may vote for their absent fellow-members. Sometimes it so happens that several Deputies vote on behalf of the same absent colleague, with the result that more votes are sometimes cast than there are members in the Chamber. But in case of doubt, any fifty members of the Chamber may demand a "Ballot at the Tribune," by which each Deputy being called in alphabetical order hands his ballot personally to one of the officers of the House, who drops it in the urn. To enable absentee members to come and vote the "Ballot at the Tribune" is kept open for one hour. On the outbreak of the present war many Deputies joined the war. Hence voting by proxy was introduced at all stages of legislative procedure.

The chief peculiarity of the French system lies in the great power of Committees of both Houses of the Legislature. There are twenty great permanent Committees or Commissions of the Chamber of Deputies, namely, (1) Committee on General, Departmental and Communal Administration ; (2) on Foreign Affairs ; (3) on Agriculture ; (4) on Algiers, the Colonies and Protectorates ; (5) on Alsace-Lorraine ; (6) on the Army ; (7) on Social Insurance and Relief ; (8) on Commerce, Industry and Commercial Treaties ; (9) on Accounts and Economics ; (10) on the Tariff ; (11) on Public Education and Fine Arts ; (12) on Hygiene ; (13) on Civil and Criminal Legislation ; (14) on Merchant Marine ; (15) on the Navy ; (16) on Mining and Mechanical Power ; (17) on Aeronautics ; (18) on Labour ; (19) on Public Works and Means of Communication ; (20) on Finance. Each Committee consists of forty-four members. There are 12 Committees of the Senate, each consisting of 36 members. The Committees are elected every year, but the same persons may be and are usually re-elected. The Government cannot necessarily command a majority in the Committees, because they are elected by the groups in proportion to their numerical importance, the lowest number in a group entitling it to elect members on each Committee being 14. Other Committees are also appointed as occasion demands, but they consist of 33 instead of 44 in

**Committees  
or Commi-  
ssions**

the Chamber of Deputies. Each Committee has a President and a reporter, who have got considerable authority. When a bill is proposed either by the Government or by a Private member, it is studied by the appropriate Committee. Such bills cannot come up for discussion in the Chamber until after the Committee has presented a report on the matter. The Committee often makes substantial changes in the bill.

When a bill, having been duly proposed and considered by the Committee, comes before the Chamber of Deputies, any Deputy may ask "question préalable" that is, whether discussion of the bill should not be avoided either on the ground Process of making law that the proposed bill is unconstitutional or that it is inopportune. A vote is taken on the question and if it is passed the bill is dropped; if the question is set aside, a discussion on the bill as a whole begins. When the discussion is closed, a vote is taken to determine whether the Chamber wants to discuss the bill section by section. If the vote is negative, the bill is rejected. If not, a discussion of the bill, section by section along with proposed amendments, is taken up. At this stage the Committee can withdraw any section if it perceives its fault. Then a final vote is taken on the whole bill as amended. If the bill is passed, it is sent to the Senate, where it follows much the same procedure as in the Lower House. If the Senate adopts it, it is laid before the President of the Republic for promulgation.

The Finance Committee is the most powerful of all the Committees. It can alter the various items in the budget proposed by the Government at its own pleasure. It can refuse some appropriations and add others. It considers the budget Powers of the Finance Committee and procedure of passing the budget through various sub-Committees, each of which has a Reporter working under the Reporter-General. The Reporter-General presents the budget to the Chamber and pilots it through the House. The Finance Minister has no power to move amendments to it. Thus the actual control over finance has passed to the members of the Finance Committee, who, however, are not effectively answerable to the public. "When the Ministerial scheme," observes Lord Bryce, "comes before the Chamber, the Reporter appears as a sort of second and rival Finance Minister, whose views may prevail against those of the Cabinet. The Government of the day has little influence, except what it may personally and indirectly exert, upon the Composition of the Commissions, which may contain a majority of members opposed to its general financial policy, or to the view it takes of particular measures. The natural result is to render legislation incoherent, to make the conduct of financial policy unstable and confused, and to encourage extravagance, because

Ministers cannot prevent expenditure they think needless. A further consequence is to reduce the authority of an Executive which can be over-ruled." Unlike the British procedure, any French Deputy can propose that new items be inserted or larger sums be provided for the existing items, but he must at the same time propose a new revenue or a corresponding increase in an existing revenue. But no proposal can be made to increase salary or pension of Government servants. In recent years there has been so much quarrel over the budget that Parliament has often failed to vote it in time. In order to enable the Finance Minister to carry on the administration, "provisional twelfths" are voted by each House every month. These sums are divided among the different branches of Government by a Presidential decree. When the budget is finally voted, the sums already appropriated are deducted from the totals. The Senate cannot insert or increase items other than those previously proposed by the Government in the budget as it first reached the Chamber of Deputies.

'Provisional  
Twelfths'

### VIII. The French Judicial System

The highest Court in France is the Cassation Court consisting of three sections namely, (1) The Court of Petition, (2) The Civil Court and (3) The Criminal Court. Appeals from the lower courts are heard by this highest court. Each of the sections is under a Judge President.

The Cassa-  
tion Court

The lower courts may be classified broadly into two divisions namely, (1) The Ordinary Courts, Civil and Criminal; and (2) the Administrative Courts. The lowest Ordinary Courts are the Courts of the Justice of the Peace, their jurisdiction being limited to a Canton.

The lower  
Courts

The next higher court is the Court of the First Instance. It has jurisdiction, both Original and Appellate, over a Department and consists of one Judge President and two other Judges. The next higher court is the Court of Appeal having jurisdiction over one or more Departments. In France there is another type of court, namely, the Court of Assize which tries serious criminal cases. These courts have their sessions quarterly and try with the help of the jury.

Courts of  
First  
Instance and  
of Appeal

In addition to these courts there are also a number of Commercial Courts for dealing with Commercial cases.

Commercial  
Courts

The President of the French Republic appoints the Judges who hold office during good behaviour and are removable only by the Cassation Court.

## IX. The Party System

### Recent Phase

The party politics of post-War France is characterised by a greater emphasis on coalition of allied groups and a sharper cleavage between the social classes. The elections of November, 1919, brought into power a coalition known as the *Bloc National*, which represented an alliance of diehards, Catholic clericals and big financial and industrial interests generally. Its policy was to make Germany pay for the damage done by the war. It considered even Clemenceau not stern enough against Germany. Under Millerand, Briand and Poincaré it remained in power till 1924, when the latter's efforts to invade the Ruhr brought about the downfall of the coalition

*The Bloc  
National*

A new coalition, the *Cartel des Gauches*, composed of a group of moderate factions representing the small industrialist, the rentier, the peasant proprietor and the civil servant, came to power in 1924 under the leadership of Herriot. It advocated a policy of peace abroad, recognised the Soviet Government of Russia officially and tried to avoid additional taxation. But when it attempted to raise additional taxes in April, 1926, the Ministry lost its majority.

*Cartel des  
Gauches*

Poincaré again came to power at the head of a new coalition, called the *Union Nationale*. He was able to balance the budget after sixteen years and to restore the gold standard in 1928. As the franc was fixed at one-fifth of its pre-War level, the rentiers were deprived of four-fifths of their income and the Government was relieved of four-fifths of its capital charges. But French industries received a great impetus and captured foreign markets by underselling the foreigners. The depression, which took place in 1929, caused heavy loss to French industry. The Government had to spend a vast amount on armaments and could not balance the budget.

*Union  
Nationale*

In the elections of 1932, the *Union Nationale* was defeated and a less conservative coalition came into power under Herriot. The new coalition, too, failed to make up the deficit in the budget because it was afraid of alienating its supporters by any scheme of additional taxation. The Stavisky scandal (financial) in which a Cabinet Minister was involved brought about the downfall of the Ministry. On February 6, 1934, the French Royalists and Communists made common cause in rioting in the streets of Paris

*Conserva-  
tive Coa-  
lition*

At this critical juncture Doumergue, an octogenarian ex-President, came to the rescue of the Republic and formed a Ministry.

called the National Concentration Doumergue thought of calling a Constituent Assembly at Versailles with the object of carrying reforms to prohibit the proposal of expenditure by Private members, to curtail the right of Civil Servants to strike, and to empower the Premier to dissolve the Chamber at will But as the last proposal savoured of Fascism, the left wing of his Ministry revolted and he had to resign

After a good deal of shuffling and reshuffling of the Ministry, Leon Blum, the Socialist leader was able to come to power in February, 1936. He got the support of a coalition of the left wing parties, called the Popular Front. M. Blum was able to introduce 40 hours working day for labour in all industries, to give them 15 days' leave with full pay in a year and many other amenities. On February 26, 1937, ex-Premier, Pierre-Etienne Flandin, made a heavy attack on Blum, but Blum was able to defeat the attack by 362 to 211 votes. The Blum Ministry fell in July, 1937. Then the Radical-Socialist Chautemps formed a more conservative Government with the orthodox economist Bonnet as Minister of Finance. Bonnet was able to give business a temporary relief through a new devaluation of the franc. On January 12, Bonnet asked Chautemps to break with the Communists and to include in his Cabinet representatives of the Centre groups in the Chamber with a view to restore confidence to business. The Socialists were unwilling to take this step and in consequence the Chautemps Ministry resigned on January 14, 1938. Chautemps formed another Ministry almost exclusively with the Radical-Socialists, but it too had to resign on March 10, 1938. Seeing this Ministerial crisis in France Hitler seized Austria. Blum now formed a Ministry with the Socialists and the Radical Socialists. He had asked for the co-operation of the Centre but was refused. The Popular Front Cabinets failed to solve the financial and economic issues and hence there occurred now a definite turn towards more Conservative policy. Daladier, a former professor of History, who commanded the support of both the Socialists and of the Conservative groups formed a Government on April 4, 1938

In July 1936, Jaques Doriot launched a Fascist party called the French Popular Party. Financial interests and the young middle-class Frenchmen were casting their eyes about in search of a leader who would be able to stem the rising and all-powerful mass movement that constituted the People's Front under Blum. They got the leader in Doriot, an ex-Communist like Mussolini. He attained considerable success. He proclaimed the New French Revolution, with the division of France into three distinct

social groups : the worker, the peasant, and the middle class. The Fascists must have been powerful in France before June, 1940 ; otherwise the fall of France would not have been so sudden. It is now recognised by many that some of the most influential politicians of France have virtually sold off their country to the Germans.

The seat of Government of unoccupied France is at Vichy, because Paris is occupied by the Germans. The Vichy Government has very little independence of its own.

## CHAPTER XXXI

### CONSTITUTION OF SWITZERLAND

#### I. Characteristics of the Swiss Constitution

The Swiss Constitution is the most democratic of all the constitutions of the world. It is a Government, under which the principles of direct democracy have been extensively applied through Initiative and Referendum. If, however, difference in religion and language be considered a hindrance to democratic government, as it is done in India, Switzerland is most unsuited for democracy. Here about 57 per cent of the population are Protestants, nearly 41 per cent are Catholics and 0.5 per cent are Jews; 71 per cent speak the German language, 21 per cent French, about 6 per cent Italian, and little more than 1 per cent Romansch. In spite of these apparent handicaps of diversity of religion and language, this little country of four million people has worked out a system of government which in certain respects combines the stability of the American system with the responsibility of the British system.

Lesson of  
the Swiss  
Constitution  
for India

The Constitution of Switzerland is federal in character. It is a Federation of 19 Cantons, each having the right to send two members to the Council of State and six half-Cantons, sending one member each to that body. The half-Cantons have separate Cantonal Governments. The Constitution is rigid in character, because the Federal Assembly has no power to amend the Constitution. Proposals for amendment may emanate either from the Federal Assembly or from fifty thousand voters submitting a draft of the proposed change to the Federal Assembly. The latter process is known as Initiative; but if the people initiate a proposal, the Federal Assembly has the right of making a counter-proposition to the people. Whether the amendment is proposed by the Federal Assembly or by the fifty thousand voters, it must be submitted to Referendum. It must secure the support of a majority of the voters as well as a majority of the Cantons. Between 1874 and 1932, the Federal Assembly proposed 42 amendments of which 33 have been accepted; but only a few attempts at amending the Constitution by means of popular Initiative have been successful.

A federal  
and rigid  
Constitution

Process of  
Amendment

As the Constitution is of the rigid type, it is also a written one. It is twice as long as the Constitution of the U. S. A. But as in all other Constitutions, conventions play an important part in it. The Constitution guarantees

Laws and  
Customs

freedom of the press, freedom of worship and equality of all citizens before the eye of law. But the Jury system is not mentioned in it.

## II. Structure of the Federal Constitution

Switzerland was a Confederation up to the year 1848, when the present federal state came into existence. The Constitution of 1848 as amended and modified by the important revision of 1874, is the basis of the present Constitution of Switzerland. The distribution of powers between the Federal and the Cantonal Government is generally similar to that of the American and Australian Federations. The Federal Government has control over foreign relations, declares war and peace, makes treaties, manages national army, owns and works almost all the railways, post, telegraph, copyright, currency and national finance, banking and customary duties, water power, monopoly of gunpowder and the production of alcohol; and legislates upon commerce and contracts. It determines questions as to the meaning and construction of the Constitution including cases in which a Canton is alleged to have transgressed that instrument. In the U. S. A this function belongs to the Supreme Court. In other respects too the Swiss Federation has wider powers than the American Federation. Thus, it may deal with matters relating to private law, education and commerce and administer many state monopolies.

The Federal Government possesses some concurrent powers exercisable conjointly with the Cantons, and can supervise the action of the Cantons in certain fields, such as industrial conditions, insurance, highways, the regulation of the press and education requiring the Cantons to provide instruction which shall be compulsory, unsectarian and gratuitous. When it exerts these concurrent powers its statutes prevail against those of a Canton. The residuary power belongs to the Cantons.

The Federal Government consists of four authorities :—(a) the Legislature, *viz.*, the National Assembly, which is the supreme representative body; (b) the Executive, *viz.*, the Federal Council, which is an administrative body of seven members; (c) the Judiciary, *viz.*, one Federal Tribunal; (d) the people of the Confederation, which, being the final authority empowered to act by its direct vote, has the ultimate control of legislation, and through legislation of the Government as a whole. The people exercise their control through Initiative and Referendum.



### III. The Federal Legislature

The Federal Legislature, called the National Assembly, consists of two Houses—the National Council and the Council of States.

The National Council is elected by the citizens of the Cantons in Cantonal districts by proportional representation. The number of members which a Canton would elect depends upon its population. The smallest Canton sends one member, while Bern sends 31 members. Every adult male has voting power. In 1930, the term of the House has been extended from three to four years. Previously every 20,000 persons used to send one member, now each 22,000 send one member. The total number of members is 187. Officials of the Cantonal Governments may offer themselves as candidates for seats in the National Council.

The Council of States is the second chamber and is analogous to the American Senate. It consists of two members from each full Canton, and one member from each half Canton chosen by each Canton according to its own laws. Some Cantons choose councillors for one, some for three years. The salary of members is paid by the Cantons.

The two Chambers sit together as a National Assembly for the election of the Federal Executive Council and of its President, Vice-President, Commander-in-Chief of the Swiss Federal Army, the Chancellor of the Federal Tribunal and also for the determination of legal questions, and for granting pardons.

In theory, the two Chambers have equal powers in legislative, administrative and judicial affairs. But in practice the National Council is more powerful than the Second Chamber, the Council of States. The Swiss Constitution makes no provision for settling disputes between the two Houses: and in fact disputes have been rare. When, however, such a friction occurs, it is set at rest by popular Referendum.

The Swiss Legislature is comparatively free from party turmoils and transacts its business in the most efficient way. Its scope of authority, however, is limited in two ways. It cannot displace the Ministers, and in the legislative sphere it cannot say the last word, since that belongs to the people. Another peculiarity of the Swiss Legislature is the absence of the Committee system. The Federal Council (the Executive) is asked to frame bills at the wishes of the people, when they exercise the power of the Initiative or at the dictation of the dominant party. Either Chamber may by resolution request the Federal Executive to prepare a bill on any specified subject. These

Composition  
of the  
National  
Council

The Council  
of State

The  
National  
Assembly

Relation  
between the  
two Houses

Peculiarities  
of the  
Swiss  
Legislature

bills are then discussed and enacted by the Swiss Legislature "As the Assembly usually includes," observes Rappard, "no former members and but very few members of the Federal Government, its function in fact often resembles that of an advisory rather than that of a sovereign body. Government measures are seldom seriously amended and still more seldom rejected by the Legislature, which in this respect has always shown itself far more docile politically than the people at the polls. The success of the Referendum in Switzerland is both a cause and a consequence of this extreme parliamentary docility."

#### IV. The Federal Executive

The Federal Executive consists of seven members, elected by the Federal Assembly for four years. Members are eligible for re-election. Some members have held office as long as thirty-two years. Each member is paid a salary of The Federal Council about thirtythree thousand rupees a year (32000 Swiss Francs). The members of the Federal Council cannot be removed within this period. One of the members is annually elected by the Federal Assembly to be the President of this Council and he bears the title of President of the Confederation.

The Federal Council is not a Cabinet in the sense that it does not lead the Legislature and is not displaceable thereby. But it is not as independent of Legislature as the President of the U. S. A. The second striking feature of the Characteristics of the Swiss Executive Federal Council is that it stands outside the parties, and does not determine party policy. Determination of policy belongs to the Assembly, though in practice, the Council by its knowledge and experience exerts much influence upon questions of general principle. In foreign affairs it has almost a free hand. When the action or policy of the Federal Council is disapproved by the Assembly, it does not mean a vote of censure on the Council. The Council changes its course of action according to the desire of the Assembly and continues in office. "The Swiss Federal Councillor," observes an eminent writer, "is like a lawyer or an architect in that his advice is sought and usually heeded; but he is not supposed to throw up his job in a hurry whenever his employer insists on having something done differently." The Federal Council acts, indeed, as a body, but its members are allowed to hold and even express differences in opinion. An administrative department is allotted to each of the members of the Council and he is held particularly responsible for that department. The Departments are . (1) Foreign affairs, (2) Interior, (3) Justice and Police, (4) Military, (5) Finance and Customs, (6) Agriculture, Commerce, Industry, (7) Posts and Railways. But the Council meets constantly as a sort of Cabinet for the discussion of important business. Its members

appear, but do not vote, in both the branches of the Legislature. When business relating to a particular department is being discussed there, the member in charge of that department attends, answers questions and gives explanations and joins in debate.

The Federal Council has certain judicial duties too. As there are no administrative courts, the Council sits in judgment over the conduct of the civil servants. The Swiss Executive has got some outstanding merits. First, it is a non-partisan body and hence can mediate between contending parties. The Radical Democratic Party constitutes the largest group in the National Council, but the Federal Council consists of four Radical Democratic Councillors, two Catholic Conservatives, and one representative of the Farmers' Workers' and Middle Class Party. Secondly, it assures the continuity of experienced and efficient men in office. The Executive Councillors are re-elected so long as they desire to serve. In no other democratic state has the Executive such a stability. As the Executive is stable, it secures continuity in policy.

## V. The Federal Judiciary

The Federal Tribunal consists of twenty-four judges appointed by the Federal Assembly for six years. But the judges can be and are re-elected. The Tribunal has original jurisdiction in controversies arising between the Confederation and Cantons; it has also appellate jurisdiction in cases referred to it from Cantonal courts. Moreover, it has power to try cases of treason against the Confederation. It has criminal jurisdiction, with a jury of twelve. The Federal Tribunal can set aside a Cantonal law on the ground that it is in conflict either with the Federal Constitution or with Federal laws. It differs from the U. S. A. Supreme Court in the fact that it has no power to declare any Federal law to be invalid. In 1928, a court has been set up to try cases under administrative law

**Elected  
Judges**

## VI. Political Parties in Switzerland

Switzerland with her diversity of races, religions and languages would have been the breeding ground of large number of political parties, generating hatred and animosity towards one another had she been actuated by the spirit which prevails among the so-called minority communities in India. But the intense patriotism of the Swiss people has saved them from such a calamity. Race, religion or language do not constitute the basis of any party in Switzerland. The tradition of the Swiss political life has been its remarkable freedom from party politics. But in recent years the influence of the Party system is making itself felt even in this permanently neutralised

**No bitter  
partisan  
spirit**

state "Party Organization," observed Munro in 1931, "has tightened during the past decade and professional organizers, known as party secretaries, have become more in evidence as well as busier" In November, 1932, the Conservatives held a mock trial of Socialist leaders which led to rioting. The court held Léon Nicole, editor of the Socialist newspaper '*Le Travail*', responsible for rioting because he had incited the Socialists to violence. In 1933, the Canton of Geneva returned M. Nicole and a Socialist majority to the Federal Assembly. The Socialists also gained control of the City Governments of Zurich and Lausanne. Their success as well as the example of the Nazis in Germany led to the formation of the National Socialist Confederation, which like the Nazis is anti-Jewish in tendency. The Socialist Party is the second largest in the National Council, yet it has not been able to elect one of its members to the Federal Executive; nor have the Fascists been able to make many inroads on the Swiss system of Democracy. The position of the parties after the election held on October 27, 1935, was as follows —

#### Council of State

| Parties                           | Number of Members |
|-----------------------------------|-------------------|
| Catholic Conservatives            | 19                |
| Radical Democratic                | 18                |
| Farmers, Workers and Middle Class | 3                 |
| Liberal Democratic                | 2                 |
| Social Democratic                 | 1                 |
| Social Political                  | 1                 |
|                                   | <hr/>             |
|                                   | 44                |

#### National Council

|                                   |       |
|-----------------------------------|-------|
| Radical Democratic                | 48    |
| Social Democratic                 | 50    |
| Catholic Conservative             | 42    |
| Farmers, Workers and Middle Class | 21    |
| Liberal Conservatives             | 7     |
| Communist                         | 2     |
| Other Parties                     | 17    |
|                                   | <hr/> |

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### VII. The Swiss Civil Service

The Swiss Civil Service is recruited by competitive examination, but in appointing persons to the more important and responsible posts, the Federal Council exercises its discretion. Permanent officials of the departments assist in the drafting of legislation. There are now more than fifteen thousand persons, that is, more than eight per cent of the whole number of persons gainfully employed in the country, who are public officials under the Federal, Cantonal and City Governments. They are organised under powerful Trade Unions. By a law of 1925, provision has

been made to give higher salary to married officials than what is given to bachelors; and also for granting additional allowance for each dependent child. In view of the alarming decrease of population among the higher classes in India, such a step should be taken in this country too.

### VIII. Direct Democracy and the Causes of its Success in Switzerland

In Switzerland, provision is made for the direct participation of the people in the Government in three ways, namely—the

*Landsgemeinde*, or general meeting of the people.  
 The Landsgemeinde Initiative and Referendum. In six Cantons the people

meet usually on the last Sunday in April in the open air in what is called the *Landsgemeinde*. Here they discuss public questions, arrive at important decisions, revise, if necessary, the Cantonal Constitution, enact ordinary laws, impose taxes and exercise effective control over the Cantonal Executive Commission. They carry on these important businesses with dignity, decorum and order. "At the present time," observes Prof. Brooks, "it is generally conceded that the *Landsgemeinde* will be perpetuated indefinitely in the six democratic Cantons of Switzerland as 'the most natural, most vital and most beautiful embodiment of Democracy.' In the other Cantons, though the people do not meet in Town-meeting, yet they can make their influence decisive through the institutions of Referendum and Initiative. Eleven Cantons have adopted the obligatory Referendum for all ordinary laws; and all the Cantons excepting one have the Initiative for ordinary legislation.

In the Federal Government, Referendum is obligatory on all constitutional amendments. If thirty thousand voters request

in a petition within ninety days after the passing of an ordinary law, that the law should be referred to the people, Referendum has to be invoked in that case.  
 Referendum and Initiative

But the Constitution provides that the Referendum can only be applied to laws and resolutions of general application and which are not of an urgent character. This clause has been interpreted as excluding treaties, the budget, and grants-in-aid for local improvements. In 1923, however, a Convention, signed by the Swiss Government relative to the free-zone dispute with France, was referred to the people, who rejected it by a large majority. It has already been pointed out that 50,000 voters by petition can *initiate* an amendment to Federal Constitution, but surprisingly enough there is no Initiative on ordinary laws in the Federal Authority. Between 1874 and 1932, 90·4 per cent of the Federal laws and decrees have come into effect without a referendum; it is only on forty laws out of four hundred and fifteen

laws that the Referendum was asked. Of these forty, the people and the Cantons rejected twenty-six and accepted fourteen. The proportion actually voting has risen from 51·6 per cent between 1911 and 1920 to 60·7 per cent between 1921 and 1931. It is usually found that the laws which seek to impose any new financial burden, or seek to infringe the rights over private property are usually overthrown, irrespective of their merits. Thus, in 1931, a law for state old-age insurance was rejected, though it was unanimously adopted by the Lower House; in 1922, a socialist proposal for capital levy was also rejected; in 1926, the people similarly rejected a proposal for a government wheat monopoly. Bonjour claims that Referendum, "is the surest method of discovering the wishes of the people—an excellent barometer of the political atmosphere"; that "it compels the legislator to conform with the aspirations of the people", and that "it puts an end to acute conflicts between people and governments, and provides one of the safest barriers there can be against revolutionary agitation." Finer, however, thinks that the voters are ill-fitted by their education and their selfish instincts to pronounce impartial and sound judgment on complex issues of legislation; and that the country would be better off, if the voters "learn to choose some one whom on the grounds of honesty, capacity and consonance with their general point of view and interests they can trust." But it cannot be denied that the Referendum stimulates patriotism and inspires a sense of responsibility in the citizens. It affords an excellent arena for political education. It brings the governing class in close contact with the masses, on whom rests the final authority. The people feel that they are really sovereign.

A number of factors has contributed to the success of direct democracy in Switzerland. First, the country is permanently neutralised by International Law; hence, it is free from the complications arising out of an active foreign policy. Secondly, the Swiss people are remarkably frugal and simple. They do not like extravagance on the part of the government. They exercise their power with moderation. Thirdly, as Switzerland is a small country, it is possible to refer many issues to popular vote. The general education of citizens enables them to give sound decision in a majority of cases. The Swiss schools impart excellent civic training. The peculiar character of the Executive also contributes to the success of democratic governments in Switzerland. But the ultimate cause of the success of democracy in Switzerland is to be sought rather in the good sense of the Swiss people than in any extraneous constitutional arrangement. A people inclined to take extreme views in matters relating to principles and policy of government would find the Swiss system unworkable

Causes of  
success of  
Swiss  
democracy

## CHAPTER XXXII

### THE CONSTITUTION OF THE U. S. A.

#### I. Its Character

The constitution of the United States of America is based on the principle of checks and balances. This scheme of Government was framed in the last quarter of the eighteenth century under the influence of certain doctrines and beliefs and hopes and apprehensions. The principles from which the authors of the first constitution set out were four in number; viz.—(1) to secure the absolute sovereignty of the people, (2) to recognise complete equality among citizens, (3) to protect the people against usurpation or misuse of authority by their officials, and (4) to protect the rights of the states against the encroachment of the central or federal authority.

Principles  
of the  
Constitution

There was intense and bitter jealousy between the thirteen colonies, who formed the original members of the confederation. The declaration of Independence asserted, "These united colonies, are and of right ought to be, free and independent states." The Confederation was formed in 1781, but no central authority having an effective will of its own was created. The States attached so much importance to their individual independence that they were afraid to grant to any central authority an executive power which might ultimately deprive them of all their rights. But this system could last only for eight years. In 1787 the States met in a Convention at Philadelphia and drew up a Constitution which set up a Central Government. The preamble of the Constitution explains the reasons for taking this step: "We, the people of the United States, in order to form a more perfect union, establish justice, insure domestic tranquillity, provide for the common defence, promote the general welfare, secure the Blessings of Liberty to ourselves and our posterity, do ordain and establish this Constitution for the United States of America." This Constitution came into force in 1789.

Origin of the  
Constitution

The American Constitution is a federal one, by which the National or Federal Government is vested only with a delegated authority. "The delegation of powers to the National Federal Government," observes Sir Maurice Amos in his recent work on the American Constitution (1938), "is to be regarded not as a concession made by the several states, but as coming from the people of the United States at large. That is to say, that the sovereignty of the United States and the sovereignties of the individual States are derived indepen-

Nature  
of the  
Federal  
Government

dently from the same source. And if it be true that the line of demarcation between the sovereignty of the Federal Government and that of the forty-eight States is to be regarded as so traced that whatever powers the Constitution has not given, either expressly or by implication, to the Union, are reserved to the States, that is not because the States have any primacy over the Union, but because the common creator of both, the people, has so willed it." The Constitution contains three lists of powers, namely, a list of what the Congress can do, a list of what the Congress can not do, and a list of what the States can not do. The Congress is given power to lay and collect taxes, duties, imports and excises, to pay the debts and provide for the common defence and general welfare of the United States; to borrow money on the credit of the United States; to declare war, to raise and support armies and to maintain a navy, to regulate commerce with foreign nations and among the several States; to establish a uniform rule of naturalization; to make all needful rules and regulations respecting the territory or other property belonging to the United States, to legislate for the national capital, the city of Washington, and the district of Columbia in which it is situated, and "to make all laws which shall be necessary and proper for carrying into execution the foregoing powers." The second list provides that the Congress may not suspend the privilege of the writ of 'habeas corpus', 'unless when in cases of rebellion or invasion the public safety may require it'; it may pass no bill of attainder or ex-post facto law; and it may give no preference 'by any regulation of commerce or revenue to the ports of one State over those of another.' The original Constitution provided that no direct tax "shall be laid, unless in proportion to the census or enumeration"; but the 16th Amendment of 1913 virtually repealed it by providing that "the Congress shall have power to lay and collect taxes on incomes, from whatever source derived, without apportionment among the several States, and without regard to any census or enumeration."

The first ten amendments of the Constitution guarantee complete equality among the citizens and protect them against abuse of power by their officials. These amendments guarantee religious toleration, the rights of free speech, freedom of the press, freedom of assembly and petition; prohibit unreasonable searches and general warrants and deprivation of life, liberty or property without due process of law; and guarantee trial by Jury in criminal prosecution and in civil suits at Common Law.

The States are prohibited from entering into any treaty, alliance or confederation, coining money, emitting bills of credit; making anything but gold and silver coin a tender in



Rights of States      payment of debt: passing any bill of attainder or any law impairing the obligation of contracts. The 13th Amendment prohibited slavery, the 14th the making of any law which may abridge the privileges or immunities of citizens, the 15th prohibited the denial of the franchise on account of 'race, colour, or previous condition of servitude, and the 19th prohibited making of any law denying the right of women to franchise. The States can make laws on any other subject, thus allowing them to have major share in all the business of legislation and execution of laws. The subjects reserved to the States include the whole law of real and personal property, the law of contract and of tort, commercial law, the law of trusts, family law, the greater part of administrative law relating to such subjects as labour conditions, factory laws, child labour, public health, public morals, education, and the law relating to the organization, power and procedure of the Courts. But the recent tendency in American Government is to attempt at uniformity with regard to laws relating to conditions of labour, commercial law, marriage and divorce

The second characteristic of the American Constitution is that it is not only a written but also a rigid one. It is impossible for the Federal authority alone to change or amend it. Amendments may be proposed in either of two ways: either by a two-thirds vote of both Houses of Congress; or by a Convention called together on the application of the legislatures of two-thirds of the States. An amendment proposed in one or other of these ways has to be ratified by the legislatures of, or by Conventions in three-fourths of the States. But the Constitution has grown in course of time by means of customs and usage, judicial and administrative decisions and formal legislation.

The third characteristic is the power of the Federal Court to decide on the legality of laws passed by the Congress. The Supreme Court is independent of both the Legislature and the Executive and it holds the Constitution to be the supreme law of the United States. In 148 years from 1789 to 1937, sixty-four Acts of the Congress out of a total of approximately 58000, have been declared unconstitutional by the Supreme Court. According to Burgess the permanent existence of republican government depends upon this power of the Judiciary more than on anything else, because, "elective government must be party government—majority government; and unless the domain of individual liberty is protected by an independent, unpolitical department, such government degenerates into party absolutism and then into Caesarism." But the judicial supremacy reduces the power of the Congress and makes it a non-sovereign law-making body. According to

A rigid Constitution  
 Supremacy of the Judiciary and its effects

some publicists the Congress is in a perpetual stage of non-age and the American people are bound by a testament made by their forefathers. But Sir Maurice Aмос opines that the National Government ought to be compared not to an infant, an alien or a married woman, but to an agent, to whom certain authorities have been delegated by the sovereign people. The present generation may change the arrangement made by their forefathers, hence it is wrong to say that the people are bound by the testament of the latter. Another evil arising out of the judicial supremacy is that political questions are not discussed on their intrinsic merits, but on their conformity to the Constitution or otherwise. Moreover, in recent years the Supreme Court has set aside many laws relating to the New Deal of President Roosevelt. It has, therefore, been charged with partisan spirit or with stiff, unyielding conservatism.

## II. Checks and Balances in the Constitution

The fathers of the American Constitution entertained a lively suspicion of the officers of the Government and also of Democracy. To guard against the usurpation of powers by any one organ of Government, they not only made the Constitution supreme, but also provided a number of checks and balances. These checks and balances were devised to secure the sovereignty of the people. The following are the checks and balances <sup>A balanced Constitution</sup> provided in the Constitution of the U S A. —Under the influence of Montesquien's theory of separation of powers, the functions of Government have been divided into the Legislative, Executive and Judicial departments. Each department has been made independent of others. The two branches of the Legislature, the Senate and the House of Representatives are balanced against one another. The Congress is limited by the veto of the Executive. The Executive is limited by the right of the Senate to disapprove the public service appointments and disallow the treaties made by the President. The Judiciary as the interpreter of the Constitution has the function of declaring void any action of the other departments of Government which transgressed the will of people as set forth in the Constitution. The Federal authority as a whole is set up against the State Government. The State Government is balanced by the Local Government. Behind all the organs of Government—Federal, State and Local—lies the power of the people. "The ultimate fountain of power," observes Bryce, "popular sovereignty, always flows full and strong, welling up from its deep source, but it is thereafter diverted into many channels, each of which is so confined by skilfully constructed embankments that it cannot overflow the watchful hand of the Judiciary being ready to mend the bank at any point where the stream threatens to break through".

### III. Changes in the Spirit of the Constitution

The circumstances under which the original Constitution was drawn up have radically changed and along with the change in circumstances, a change in the spirit of the Constitution has been necessary. The original Constitution was framed to suit a territory of which only about 100,000 square miles were inhabited by a little over 2,000,000 white people. At present the United States covers an area of 2,974,000 square miles and has a population of 130 millions.

The framers of the Constitution wanted to keep the departments rigidly separated from one another. But growth of the party system, which they could not foresee has brought the Executive and the Legislature in closer relation with each other. "It is from the non-legal party machinery that the legal machinery of government derives its motive power." Without the party machine and organization it would have been very difficult to work out the Constitution. Another significant change is the entrusting of power greater than what the Constitution intended to do to the President. President Roosevelt and President Wilson frequently addressed the Congress in person and pressed it to deal with matters they deemed urgent. The nation has put great trust in President Roosevelt.

Then again the states have grown less jealous of the Federal authority than before. This is evidenced by the Sixteenth Amendment which gives to Congress the power of laying and collecting taxes on incomes derived from any source. By the application of the theory of implied power the Federal authority is now extending its sphere of activity; especially in matters of trade and transport. It must be clearly understood that these changes have been introduced, not by formal amendments to the Constitution, but by custom and Convention. Convention has changed the mode of electing the President. The framers of the Constitution intended that the President should be elected, not by the citizens directly but indirectly by the electors, who were expected to exercise independent judgment. But the enforcement of party discipline has made the electors mere party-agents, who are bound to vote for the nominee of the party.

### IV. The President

The Executive power is vested in the President of the United States of America. He is assisted by the Vice-President. No person except a natural-born citizen is eligible to office of President; neither is any person eligible to that office who has not attained the age of thirty-five years and

been fourteen years a resident within the United States. The Constitution makes the following arrangement for the election of the President and Vice-President. Every four years the citizens of each State elect qualified voters of that State to act as electors of the President and Vice-President. There are as many electors in each State as it has Representatives and Senators in Congress. The electors of each State have only one vote. A majority of votes of all the States is necessary for a choice. These provisions were made to keep the election free from direct popular influence. But this intention has been foiled. Long before the election, party managers try to find out the man who is likely to win the election, who is likely to be pliable in the matter of policy and appointments, and to be efficient in government. Well-known men have many enemies, so 'dark horses' are preferred. Once the managers are able to find out the men of their choice, they try to mislead the public and the politicians familiar with their characters and careers. Then in June, that is, five months before the election of Presidential electors, the Party Conventions meet to adopt candidates for Presidency and Vice-Presidency. Each Party holds a Convention which is described as "a howling, screaming, demented mob of partially or wholly intoxicated men and women numbering over 2,000, meeting to listen to speeches, to yell whenever their 'favourite son' or his gang of friends are mentioned, to bellow defiance when an opponent is praised." But the political wire is pulled behind the Conventions by powerful bosses, who "trade policies, ambassadorships, Cabinet posts and State appointments, for votes." The electors are elected on the Tuesday next after the first Monday in November every fourth year and they elect the President and the Vice-President on second Monday in January following. But these two steps have become merely formal, because when the voters in each state elect electors, they know for which President and Vice-President the latter are going to vote. The candidate who is adopted for the post of President is not usually consulted before the party adopts a programme; and no body expects the successful candidate to adhere to it. Before 1940 the Convention of the Constitution was that a President should not be re-elected for more than one term. But the Convention was disregarded in the last Presidential election in November, 1940 and President Roosevelt has been elected for the third term.

Method of election

The position of the President is one of the most important posts in the world of men. He is the Commander-in-Chief of the Army and Navy. He has the power to make treaties by and with the advice and consent of the State. He appoints by and with the advice and consent of the State, Judges of the Supreme Court, Ambassadors, Ministers and

Powers of the President

**Consuls** He appoints the members of his Cabinet, who are responsible to him and not to the Congress. He may convene the Congress in special session and when the two Houses are unable to agree upon a date, he may adjourn the Congress. He cannot make laws, and he cannot even take part in the talks in the Congress, as the British Prime Minister can, but he has the power to veto a law. His veto, however, may be over-ridden, if both the Houses repass the Bill, each by a two-thirds majority. All sorts of important talks are performed by the President. He must keep Congress informed of the state of the union. He must receive foreign Ambassadors and Ministers. He must see that the laws are faithfully executed. He can pardon criminals. In times of war or danger the people allow the President to make what laws he likes for the time being.

The President and his Cabinet have got large discretion in the creation and application of rules relating to matters like the Inter-state Commerce Commission, the Federal Trade Commission, the Federal Reserve Board, the Tariff Commission and the Shipping Board. The President can make ordinances in the matter of tariff arrangements and public lands. In recent years the President has assumed very large powers in promoting the New Deal. In June, 1933, the National Industrial Recovery Act was passed to remove obstructions to the free flow of inter-state and foreign commerce; to promote co-operative action between trade-groups; to induce and maintain united action of labour and management under Government supervision, to eliminate unfair competition; to promote the fullest possible utilization of the present production capacity of industries, to avoid undue restriction of production; to increase the consumption of industrial and agricultural products by increasing purchasing power, to reduce and relieve unemployment; to improve standards of labour; and otherwise to rehabilitate industry and to conserve national resources. The Act authorized the President to approve, and by approving to put into force, codes of fair competition for any trade or industry which might petition to be regulated, or as to which the President might be satisfied that there prevailed in it abuses inimical to public interest or contrary to declared policy of the Act. The President got the power of prescribing the maximum hours of labour, the minimum rates of pay and other conditions of employment. But in May, 1935, the Supreme Court condemned the whole system of code-making power. In the case of the *Schechter Poultry Corporation* and others *vs.* the United States, the Chief Justice remarked: "Congress cannot delegate legislative power to the President to exercise an unfettered discretion to make whatever laws he thinks may be needed or advisable for the rehabilitation and

**Powers  
of the  
President  
under the  
New Deal  
(1933-37)**

expansion of trade or industry." But the Supreme Court experienced a change of heart in regard to the New Deal after the re-election of Roosevelt in 1937. It upheld the constitutionality of the National Labour Relation Act in five cases, which were decided on the 12th April, 1937. The Act entrusts the Executive authority with large powers. The National Labour Relations Board on finding that any employer is engaged in any 'unfair labour practice' can issue an order requiring the offender to 'cease and desist' from his offence, and 'to take such affirmative action, including reinstatement of employees with or without back pay', as will effectuate the policies of the Act.

In conducting foreign affairs the President has very large powers. He cannot, indeed, declare war, but the Congress has never declared war except upon the suggestion of the President. He lays down the main line of foreign policy, and carries on negotiations with foreign Powers. He determines the policies of neutrality, and armed intervention and threatens a foreign Power with war, whenever necessary. These powers of the President are not subject to the control of the Foreign Affairs Committee of the parliamentary assemblies, nor of the party system. "It was precisely in the war powers and in foreign policy, that the Fathers desired a single, unchecked and vigorous executive ;" observes Finer, "they have attained it, and even the power of party has been unable to overcome this dictatorship, which may be good or evil, according as the man is wise or foolish, but not as the citizen body, enlightened as well as parties may enlighten them, might desire."

Powers in  
conducting  
foreign  
affairs

The President has enormous power of patronage. In June, 1927, besides the consular and diplomatic officers, there were in all 559,138 employees in the entire Executive Civil Service, of whom 422,998, that is, about 75% were recruited by competitive examination and 137,140 offices were filled by nomination. Of this 16,700 posts were confirmed by the Senate. About 20,000 posts carrying a substantial salary are altogether the subject of President's patronage. In filling up many of these posts he is guided by the opinion of the Senator or Senators (belonging to the President's party) from the State in which the appointment is to be made, or of the local party leaders. But many other posts are filled up by him personally. Moreover, the President's power of removing an executive officer is a constant threat to the security of the Senator's nominees. This power was confirmed by the decision of Chief Justice Taft in the case of Post-master Myers *vs.* United States in 1926. But in the case of Ruthbun *vs.* United States in 1935 the Supreme Court held that as Ruthbun held the office of the member of the Federal Trade Commission, whose duty is quasi-legislative and

Patronage  
of the  
President

quasi-judicial in character, his dismissal by the President before the expiry of the term of his office was illegal. The Constitutional position with regard to the President's power of removing an officer depends, therefore, upon the character of the office concerned.

If the President's party commands a majority in Congress, his Message and Veto Powers become the vehicle of legislative leadership. President Wilson secured important laws relating to the banking system, the income tax and control of trusts through his Messages. President Taft observes that the President "is himself a part of the Legislature, in so far as he is called upon to oppose or disapprove acts of Congress. A President who took no interest in legislation, ignored his responsibility as the head of the party for carrying out ante-election promises in the matter of new laws, would not be doing what is expected of him by the people." The power of the President ultimately depends on his personality.

Legislative  
leadership

## V. The Cabinet

The Cabinet in the U. S. A. consists of the heads of departments. The departments are ten in number, namely, the Department of Treasury, the War Department, the Post Office, the Navy, the Department of the Interior, the Department of Agriculture, the Department of Labour and the Department of Commerce. The tenth is the Department of Justice, which is really the Judiciary. The heads of these Departments are merely personal assistants of the President. They are appointed by him with the consent of the Senate, which body, however, has seldom refused to approve of the selection made by the President. They are not members of the Congress and are not responsible to it. "The Cabinet is" observes President Taft, "a mere creation of the President's will. It is an extra-statutory and extra-constitutional body. It exists only by custom. If the President desired to dispense with it, he could do so. As it is, the custom is for the Cabinet to meet twice a week, and for the President to submit to its members questions upon which he thinks he needs their advice, and for the members to bring such matters in their respective departments as they deem appropriate for Cabinet conference and general discussion"

## VI. The Legislature

The Legislature of the United States is called Congress. The Congress consists of two Houses—the House of Representatives and the Senate. Representatives are elected for a term of two years by the voters of each of the States in proportion to the population of that State as determined by the latest Federal census. Senators are now elected by

Its compo-  
sition

voters to serve for six years. Each state is represented by two Senators. There are 96 Senators and 435 members of the House of Representatives. Representatives are elected alternately in the year of the Presidential election, and half-way through the President's term, so that he may know what the public think of his policies. Senators are elected for six years, one-third of the members being elected every two years, in order that each session of the Congress may have in it men experienced in public affairs. A Senator must be at least of thirty years of age, and a Representative must be above twenty-five years of age.

The Senate has equal law-making power with the House of Representatives. Every bill must pass the House of Representatives as well as the Senate. Then it is presented to the President for his signature. If he vetoes it, and both Houses pass the bill by the vote of two-thirds of each House, it becomes a law without the President's signature. If the President fails to veto or return a bill to the House in which it originated before the end of ten days from the time he receives it, the bill becomes a law.

The Senate is presided over by the Vice-President of the United States. It has got not only legislative functions but also important Judicial and Executive powers. It is a high court for trial of cases of impeachment. It also confirms the appointments made by the President and ratifies treaties made with foreign powers. In one respect the Senate is inferior to the House of Representatives. Revenue Bill originates in the House of Representatives, and not in the Senate. But the Senate can insert wholly new proposals of its own, and strike out everything except the enacting clause. Hence Bryce observes that "even in finance the Senate has established itself as at least equally powerful with the House, although this does not seem to have been contemplated by the Constitution." The Senate has many Committees, among which the most important are Committees on Appropriations, Finance, Foreign relations, Justice, Military Affairs, Naval Affairs, Inter-state Commerce and Pensions. Through these Committees the Senate is able to keep in touch with the Executive departments which work in isolation from the Legislature. The action of the President with regard to foreign policy is checked by the Committee on Foreign Affairs. Treaties are ratified not by the Congress as a whole but by the Senate only. The Senate is more powerful than the House of Representatives because it is a smaller body, containing men of experience, who are also important party leaders. It is the ambition of every member of the House of Representatives to become a Senator. As there is no time-limit for the debate in the Senate, each



Senator can block some bills indefinitely. The House of Representatives cannot accomplish anything without its concurrence. The Senate has been able to make itself eminent and respected.

## VII. The Judiciary

The Judicial power of the United States is vested in one Supreme Court, and in such inferior courts as the Congress has from time to time, ordained and established. The Supreme Court consists of a number of Judges who meet at Washington. The Judges are appointed for life by the President with the consent of the Senate. The Supreme Court has jurisdiction in (1) All cases, in law and equity, arising under the Constitution, laws and treaties of the United States ; (2) Causes affecting Ambassadors and Consuls of admiralty and maritime jurisdiction ; (3) In cases of controversies to which the United States is a party, or between a state and the citizens of another state, citizens of different states, and between citizens and foreign states. It has original jurisdiction in state cases, or those affecting Ambassadors or Consuls ; in other cases it has only an appellate jurisdiction. It hears appeals from the inferior Federal Courts, which have been set up all over the country. The Federal Judges have it as their prime duty to safeguard the Constitution and to treat as void every legislative act of the Congress, which is inconsistent with the Constitution.

The  
Supreme  
Court

Its jurisdiction

## VIII. Government of the States

The component units of the United States of America, namely the States, are autonomous republics, their powers and functions being specified by the Constitution. The division of functions between the State Government and Federal Government is based roughly on the principle that subjects of general interests, having application to the Federation as a whole are administered by the Federal Government while subjects in which the various States are individually interested are administered by the State Governments.

According to the provisions of the Constitution, every State must have a Republican form of Government and a definite Constitution. The legislature in the States consists of two Houses—one Upper and the other Lower and the members of the Upper House are elected for four years while the members of the Lower House are elected for two years. The State legislature may exercise its legislative functions within limits set by the provisions in the Constitution.

The State  
Legislature

The Executive in the States is also elected by the people. The Governor is the chief executive with a term of office varying from two years to four years in different States. Certain States have their Lieutenant-Governors also. <sup>The Governor</sup> Other State officials are appointed on an elective basis and can be removed only by impeachment by the Lower House. The principal function of the Governor is more or less like that of the President and consists in supervising the administration of the laws of the land and in informing the Legislature of the needs of the State. He is empowered to veto the decisions of the Legislature but the Legislature also by a two-thirds or two-fifths majority may override the veto. The Governor is the commander of the militia of the States.

Every State possesses its own Judiciary consisting of the Supreme Court down to the lowest courts of justice. The Supreme Court is the final court of appeal in the State and has at its head a Chief Justice and several <sup>The State Judiciary</sup> other associate Judges. The Judges are generally appointed by the people but in some States by the legislature also.

The States have almost absolute power to make their own Constitution subject to certain procedures of amendment and to the condition that the Constitution must be of a republican type. The States can levy their own taxes. <sup>Autonomy and independence of the States</sup> have their own system of local government, can elect their own executive and legislature and a judiciary. Every State maintains its own citizenship and a man can be a citizen of the United States of America only by being a citizen of a State.

The States are not entitled to secede from the Federation. They cannot exercise powers which are constitutionally exercised by the Federal Government, and also those powers which do not come within the jurisdiction of the States under the Constitution. <sup>Restrictions on the powers of the States</sup> With regard to these limitations, Bryce aptly observes that "in the partitionment of governmental functions between Nation and State, the State gets the most but the nation the highest so that the balance between the two is preserved .."

## IX. The Supreme Court Issue and the Constitution

Franklin Roosevelt, elected President of the U. S. A. in November, 1932 and re-elected in 1936 and 1940, undertook a policy of national recovery from the slump, as soon as he came to office for the first time. His policy, known as the <sup>The New Deal</sup> New Deal, means that the Congress should empower the President to spend huge sums of money on employment, agriculture, industry and financial reorganisation and to allow

him power to spend the money at his own discretion. He received the support of the Congress and his policy was evidently endorsed by the American people as was evidenced by his success at the polls at two successive elections. The Supreme Court has pronounced as many as sixteen decisions which properly may be regarded as affecting laws emanating from the New Deal. In five cases it upheld the New Deal laws and in eleven declared them unconstitutional.

Such a course of action, taken by the Supreme Court, led President Roosevelt to send a message to Congress announcing his plan for reforming the Judiciary on February 5, 1937. The plan provided: (i) "that the President may appoint a Justice to the Supreme Court in addition to every Justice who has not, or does not resign before reaching the age of 70 years and six months, with the proviso that the total number of Judges should not exceed 15. (ii) that the President may appoint an additional Judge to inferior courts under similar conditions, with the proviso that the total number of such Judges shall not exceed 50: (iii) that if, as and when a law is declared unconstitutional by an inferior court, the case will go straight to the Supreme Court, (iv) that a proctor shall be created to keep track of all cases in which the constitutionality of a law is challenged, and inform the Government."

At present there are nine Judges of the Supreme Court, six of them are over 70. Had the President's plan of enlarging the Court been approved, he would have been allowed to appoint six additional Judges. This would have brought the Supreme Court to his side, because three out of the nine existing Judges were generally regarded as favourable to the New Deal.

It should be noted that the total strength of the Supreme Court has been changed as many as five times before. When first established, it had six Judges. Eleven years later it was reduced to five. After that, the number was varied by different Congressional Acts from six to ten. Congress first fixed the number at nine in 1869. Afterwards it was reduced to seven and then raised to nine again. But it has remained at nine for more than 50 years. This history shows that the Congress would be perfectly within its rights if it changes the number of Judges from nine to fifteen.

But the real issue is that in this case the Executive and the Legislature are taking a definite step for overcoming the opposition of the Supreme Court, which has been regarded so long as the guardian of the Constitution. The American people are

at liberty to amend the Constitution in any way they like : but the procedure of amendment is a difficult one President Roosevelt believes that there is no need of amending the Constitution, because it is broad enough to permit all necessary reforms, if properly interpreted, and that if the Supreme Court as it now exists cannot, or will not, make the right kind of decisions, the Congress and the Executive are justified in revising or enlarging its personnel.

Limitation  
of the power  
of the  
Supreme  
Court

Those who are opposed to his plan of Supreme Court Revision argue that the programme of the New Deal has not worked well, that by the President's own admission one-third of the nation is still undernourished : that industrial relations have become chaotic : that the Federal debt is mounting with unprecedented speed, and that it is a good thing to have a court which dares to put on the brakes. They further argue that the President's plan implies extension of power for the Executive and opens the door for bossism and tyranny. David Lawrence in his recent book, "Supreme Court of Political Puppets" upholds the action of the nine Judges and asserts that national recovery can be brought about in the U. S. A. by leaving matters run their course "with a minimum of interference by the State." It seems that the struggle is not only over the Constitution of the U. S. A. but also one between State interference and Laissez-faire and between Labour and Capital.

Opposition  
against this  
policy

A struggle  
between  
Labour and  
Capital

The President's plan is supported by an overwhelming majority in the ranks of organized labour by farm organizations and liberal thinkers. "No issue since Lincoln's time," observes a writer, "has gripped the nation like that raised by the Court Revision Plan."

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\*The Judicial Committee of the Senate though composed of Democrats (President's own Party), reported adversely to the bill and it was dropped

## CHAPTER XXXIII

### GOVERNMENTS IN GERMANY AND ITALY

#### I. Political Evolution of Germany

Germany, which had remained divided into numerous states, attained national unity under the leadership of Prussia in 1871. The tradition of the Hohenzollern monarchy in Prussia was one of centralized military despotism. It was preserved to a certain extent in the Federal Imperial Constitution which was set up in 1871. The colossal defeat of Germany in the Great War seemed to have disillusioned the German nation in the matter of autocratic government. They veered round to an extremely democratic form of government, which they set up by the Weimer Constitution of 1919. But democracy failed to solve the economic and political problems of the German people. Hitler promised them prosperity at home and prestige abroad. Their faith in democracy, which had never been strong, weakened visibly and in 1933 Hitler was able to seize all power in his own hands. Theoretically the Weimer Constitution still forms the legal basis of the German State, but it survives only as an empty shell. To explain this point it is necessary to give in some details an account of the Weimer Constitution, which in itself is worth studying for its unique character. As this Constitution has not been formally repealed we shall use the present tense in describing its features. In the political terminology current in Germany, the Hitlerite Germany is known as the Third Reich.

#### II. Characteristics of the Imperial Constitution (1871-1918)

The German Empire, established as the result of the 'blood and iron' policy of Bismarck, was neither truly federal nor democratic in character. In form, it was a federation of twenty-five states, each with its Parliament, having authority over all matters not defined in the treaties as imperial. But in practice,

Prussia exercised a preponderant influence in it. The hereditary King of Prussia was the hereditary German Emperor, exercising in theory as well as in fact the supreme executive authority. In all federations the Second Chamber is composed of equal number of representatives from all the component units, but in the German Bundesrath or the Federal Council, Prussia alone had seventeen seats out of a total of some sixty seats. Prussia practically controlled three other seats also. Prussia alone could prevent any change in the Constitution and could veto all proposals for making changes in the

The three  
Reichs

Not a true  
federation

army, navy and fiscal system. The Bundesrath acted as the Supreme Court and settled disputes between the federal government and the states and between one state and another. But the preponderant influence of Prussia in that body stood in the way of impartial administration of justice in such cases of conflicts. The federation was not the outcome of voluntary union between the different units; it bore the mark of compulsion of one state, Prussia, over others.

The legislature of the federation was the Imperial Parliament, divided into two Chambers—the Bundesrath and the Reichstag. The members of the Bundesrath were not elected by the citizens of the different states. They were simply nominees of the state governments, and as such they voted according to the instructions of the Governments they represented. The Reichstag, or the Lower Chamber, consisted of 397 members, elected for a term of five years by universal manhood suffrage. But it had no right to initiate legislation, to express its opinion on the conduct of affairs, nor to ask Government for reports. Its consent, however, was necessary for making new laws and for imposing new taxes. The Chancellor, who was practically the supreme head of the executive, was responsible to the Emperor and not to the Legislature.

### III. The Federal State transformed into a Unitary State

The principle of federation could never gain complete recognition in Germany. If the old imperial constitution manifested strong tendency towards unitary government, the Weimer Constitution strengthened that tendency still further. The new Constitution no longer spoke of the eighteen federating units as states, but referred to them as territories (Länder), each of which must have a republican constitution. The powers left to these territories were so small, that many constitutional authorities refused to recognise Germany as a federal state. Article six of the Constitution enumerated the powers which were solely in the hands of the federal government. These powers were: exclusive authority in all questions relating to foreign and colonial affairs, organisation and maintenance and discipline of the Defence forces, communications by posts and telegraphs and telephones; coinage and customs as well as internal free trade; nationality, settlement, immigration, emigration and extradition. With a view to conciliate the Catholic opinion of Bavaria, she was allowed to send her special diplomatic representative to the Vatican. Federal laws overrode state laws and in case of difference of opinion as to whether a state law was compatible with the Federal law, an appeal could be made to the Supreme Court for a more exact interpretation of the Federal law.

The Federal Government had concurrent jurisdiction with the States in other subjects like the civil and criminal law and legal procedure; passports, police, poor-relief and supervision of travellers, the press, population, maternity and infant welfare, public health and labour laws including social insurance and labour bureaux; expropriation and socialisation as well as provision for war veterans; trade, weights and measures; money and bankruptcy including exchanges, traffic in food-stuff and articles of daily consumption; industry, mining and insurance, high-sea navigation and fishing; railways, inland waterways and aerial transport and traffic, theatres and cinemas. Article 12 provided that "so long and in so far as the Federal Government does not make use of its legislative power the States retain the power for themselves." This provision, however, did not apply to the exclusive legislative powers of the Federal Government. The States were declared autonomous in their own concerns including the framing of their own constitutions. But this autonomy was more formal than real, because Article 48 provided "If a territory fails to carry out the duties imposed upon it by the national Constitution or national laws, the President of the Reich may compel performance with the aid of armed force."

In the Third Reich the seventeen Federated States or territories, namely, Prussia, Bavaria, Wurtemberg, Baden, Saxony, Mecklenburg (consisting of Mecklenburg-Schwerin and Mecklenburg-Strelitz, which were united on January 1, 1934), Thuringia, Hesse, Oldenburg, Brunswick, Anhalt, Lippe, Schaumburg-Lippe, Hamburg, Lubeck, Bremen and Saarland, have become merely administrative units. The Unification Act of April 7, 1933 brought these territories under the rule of Governors directly responsible to Herr Hitler. Appointment and dismissal of the Governors is reserved to the Leader. By the decree of February, 1934 separate state citizenship has ceased to exist. By the law, reforming the Reich of February 1, 1934 the so-called sovereign rights formerly possessed by federated territories passed into the hands of the Reich Cabinet. The state legislatures were abolished and the state Cabinets were subordinated to the Reich Cabinet. The state Governors now draft and promulgate state laws only after securing the consent of the Reich Government. They are under the administrative supervision of the Reich Minister of Interior. Prussia, with about three-fifths of the area and population of Germany, is even more closely controlled by the Central Government than the other states. Germany has, thus, become a unified and centralized state. The centralization has been carried still further recently by carving out the administrative divisions more on geographical lines rather than on the old political basis.

Changes  
in the Cons-  
titution  
in 1934

The Reichsrat, the Second Chamber of Federal Germany, which represented the states, was abolished as it had become superfluous.

#### IV. The Executive Authority

Under the Weimer Constitution, the nominal head of the German Executive is the President. Like the American President he is elected by the vote of the people and not by the Chambers sitting together as in France. But like the French President his term of office is also seven years. He is eligible for re-election for a further term; he may also be removed from office by a vote of the people on a motion of the Reichstag, passed by a two-third majority. The President cannot be a member of the Reichstag. The German Constitution sets out a long array of powers belonging to the President. He is the supreme commander of the Federal Defence Force and is the authority to appoint and dismiss all Federal officials and Defence Force officers. He has the prerogative of pardoning criminals. He represents the Federation in International relations, sends and receives Ambassadors, concludes alliances as well as treaties with foreign powers subject to the condition that the declaration of war and conclusion of peace are effected by Federal law. But in reality the German Executive, as envisaged by the Weimer Constitution, was parliamentary in character. All orders and decrees of the President required the counter-signature of a Minister, which implied the responsibility of Ministers to the Legislature. In estimating the position of the German President, Gooch observed "The President is a symbol of unity and continuity, a master of ceremonies, a wheel in the constitutional machine. If he possesses tact and inspires confidence he may play a useful part in turning awkward corners, in composing quarrels, in solving ministerial crises, in building up the prestige of the Republic, but politically he is a cipher."

The position of the German Chancellor is somewhat analogous to that of the Prime Minister in England. He settles the political programme of his government, which is binding on all his colleagues. Each Federal Minister was in independent charge of the department entrusted to him, but the Chancellor alone was responsible to the Reichstag for it. The principle of ministerial responsibility was clearly recognised, but that of collective Cabinet responsibility was not realised under the Weimer Constitution.

The Reichstag elected on March 5, 1933, passed, on the motion of Chancellor Hitler, the Enabling Act, officially entitled "Law to combat the Misery of People and Reich" by a vote of 441 to 94. This Act provides that the Cabinet may make laws for a period of four years by ordinance, even including such laws as are not in accord with

Powers of  
the Leader  
under the  
Enabling  
Act



the Weimer Constitution. On January 31, 1937, the Reichstag continued the Enabling Act until April 1, 1941. Under the Succession Act of August, 1934, the office of Reich President was combined with that of the Chancellor, and the powers of both were conferred on Adolf Hitler. This law was submitted to the people for approval in a Plebiscite on August 19, 1934, and was overwhelmingly ratified by about 84 per cent voters. His tenure is for life and he can appoint his own substitute. The Cabinet members—nineteen in number besides Hitler—are not his colleagues, but his subordinates. They are bound to him by an unqualified oath of obedience and loyalty. Any act, whether passed by the Reichstag or adopted by the Cabinet is the “plan and will of the Leader.” The Leader has independent ordinance-making power and his ordinances are binding for the judicial courts. The fusion of the offices of President and Chancellor has rendered unnecessary the constitutional requirement that all the President’s orders and decrees be countersigned by the Chancellor or by the competent national minister. The Weimer Constitution provided that “Declaration of war and conclusion of peace shall be made by national law,” but Article 4 of the Enabling Act provides: “Treaties of the Reich with foreign states, which concern matters of national legislation, do not require the consent of the bodies participating in legislation. The Reich Cabinet is empowered to issue the necessary provisions for the execution of these treaties.” The Reich Cabinet really means the Leader, who concludes and ratifies all International treaties, including alliances. The Leader can appoint and dismiss all officers including the

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“The Cabinet consists of the following ; the date mentioned against the name is that of first appointment :

Leader and Chancellor—Adolf Hitler (January, 1933)  
 Minister of the Interior—Dr. Wilhelm Frick ( „ )  
 Minister for Foreign Affairs—Joachim Von Ribbentrop (Feb., 1938)  
 Minister of Defence—Hitler (Feb., 1938)  
 Minister of Finance—Krosigk (January, 1933)  
 Minister of Food and Agriculture—Dr. Darre (January, 1933)  
 Minister of Economic Affairs —Dr. Funk (January, 1938) also President of the Reichsbank (January, 1939)  
 Minister of Labour—Franz Seldate (January, 1938)  
 Minister of Posts—Dr. Ohnesorge (February, 1937)  
 Minister of Transport—Dr. Dorpmüller (Feb., 1937)  
 Minister for Aviation—Goering (January, 1933)  
 Minister of Justice—Dr. Gurtner ( „ „ )  
 Minister of Learning and Education—R. Rust (April, 1934)  
 Minister for Church Affairs—Hanns Kerrl (July, 1935)  
 Minister for National Enlightenment and Propaganda—Dr. Goebels (Jan., 1933)  
 Ministers without Portfolio—Dr. H. Frank (Dec., 1934), Dr. Schacht (Nov., 1937), Dr. Lammers (Nov., 1937), Dr. Meissner (Dec., 1937), and Count Von Neurath (Feb., 1938).

Cabinet Ministers. The Leader concentrates in himself not only all the legislative and executive powers, but also the supreme judicial authority. During the "Bloody Purge" of 1934, Hitler assumed the functions of "the German people's supreme judicial Magistrate." In fact, Hitler is the supreme, and omnipotent Dictator of the Reich.

## V. The German Legislature

The German Legislature under the Weimer Constitution consisted of two Houses—the Reichstag and the Reichsrat. The former was meant to represent the population and the latter the constituent states or territories. The Reichsrat was abolished by the Decree of February 14, 1934. The Reichstag, therefore, is the only legislative body in Germany, but it has delegated away its authority to legislate as well as its control over the purse by the Enabling Act.

The Reichstag is elected according to the provisions of the Weimer Constitution, by universal, equal, direct and secret votes of male and female voters of twenty years of age and above for a term of four years. It is convened, not by the President of the Republic, but by its own President, who is elected by the body itself and has all domestic authority and police powers concerning the Reichstag, its members, premises and officials. According to the Weimer Constitution, the component states were entitled to depute their plenipotentiaries to explain their point of view to the Reichstag. But they have lost this power by the Decree of February 14, 1934. Members of the Reichstag receive compensation for every day of attendance at the Reichstag sittings. The Reichstag used to hold the executive government responsible to it. But it no longer constitutes a check on the government. It is thoroughly under the control of the Nazi party. The party draws up a list of candidates for election to the Reichstag. No other candidate can stand for election. The voters can only approve or reject the list put forward by the Nazi party. The Nazis are so very sure of the approval of their candidates by the voters that they have not made any provision for the case in which their list would be rejected. Article 85 of the Weimer Constitution provided that "the budget shall be adopted by law before the beginning of the fiscal year. Funds may be procured on credit only for extraordinary needs and as a rule only for expenditures for productive works. Such a procurement as well as assumption of any liability by the Reich may be undertaken only by authority of national law". But the Enabling Act set aside these provisions of the Constitution. The Nazis explain that the budget law as well as the borrowing power of the state are merely administrative measures and these can be

adopted by the Reich Cabinet. Thus, the legislature has lost all control over finances. It has already been mentioned that by the Enabling Act the power of the Reichstag to ratify treaties has also been abolished.

The Reichsrat was formed to represent "the German states in Federal legislation and administration". It was provided by the Weimer Constitution that each state must have at least one vote in this body ; and no single state could have more than two-fifth of the total number of votes. The members of the Reichsrat were not chosen by the people but by the respective governments of their states. Every bill submitted to the Reichstag by the Federal Government had first to obtain the consent of the Reichsrat. Government could introduce the bill even without its consent, but in that case they had to explain to the Reichstag the Reichsrat's point of view. The Reichstag could pass a bill into law, despite the protest of the Reichsrat provided it had at least a three-fourth majority. In case of prolonged

#### Referendum

dispute between the two Houses, the President could refer the matter under dispute to Referendum. The President could refer any law to the popular vote for ratification. Any law could be similarly referred to the people if one tenth of the voters by petition desired it. But the Budget Law could be referred only by the President if he so desired. Bills amending the Constitution had to be referred to the people, if the Reichsrat so demanded. The duties of the Reichsrat were substantially those of an advisory council, that is, to make suggestions and recommendations, to impart information, to approve, check or delay a proposed measure.

Article 76 of the Weimer Constitution laid down the following procedure for amending the Constitution : "Resolutions of the

#### Amendment of the Constitution

Reichstag for amendment of the Constitution are valid only if two-thirds of the legal members are present and if two-thirds of those present give their assent. Moreover, resolutions of the Reichsrat for amendment of the Constitution require a two-thirds majority of all the votes cast. If by popular petition a constitutional amendment is to be submitted to a Referendum, it must be approved by a majority of the qualified voters"

## VI. Judicial System and Liberty of Subjects

The German system of Judicial administration consists of ordinary courts and administrative courts. Under the Weimer Constitution the states had their own ordinary courts with Judges who were appointed for life and could be removed from office only by judicial decisions. But by a series of decrees culminating in an act of January 24, 1935,

#### Centralisation of Courts

the administration of Justice has been completely nationalised. Under this law the Reich took over on April 1, 1935, some 65,000 judicial officials under its control. A single Ministry of Justice now functions for all the states as well as the Reich. Under the Weimer Constitution, appeals from the State Courts lay to the Supreme Court of Judicature, which was the final court of Justice in Germany. The Supreme Court could not, however, judge of the constitutionality or otherwise of laws. That function was exercised by a special High Court of Justice.

The functions of the administrative Courts were to see that the individual citizens receive proper justice against the decisions of administrative authorities. The Weimer Constitution provided a very large scope for individual liberty. The relevant articles are quoted below to show the contrast between the present position and the position envisaged by the Constitution. "Liberty of the person is inviolable. A restriction upon, or deprivation of, personal liberty, may not be imposed by public authority except by law. Persons who have been deprived of their liberty must be informed not later than the following day by what authority, and upon what grounds, the deprivation of liberty was ordered; without delay they shall have the opportunity to lodge objections against such deprivation of liberty (Art 114). Every German has the right within the limits of the general laws, to express his opinion orally, in writing, in print, pictorially, or in any other way. No circumstance arising out of his work or employment shall hinder him in the exercise of this right, and no one shall discriminate against him if he makes use of such right (Art 118). All Germans have the right to form societies or associations for purposes not prohibited by the Criminal Code. This right may not be limited by preventive regulations. The same provision applies to religious societies and associations. Every association has the right to incorporate according to the provisions of the Civil Code. Such right may not be denied to an association on the ground that its purpose is political, social or religious". (Art. 124).

Guarantee  
of individual  
liberty in  
the Weimer  
Constitution

But the present Dictatorial form of government leaves no room for the idea of constitutionally guaranteed individual rights. The Prussian Supreme Administrative Court is debarred by the Secret Police Act from reviewing the measures taken under it by the secret police. The administrative courts can no longer review the decisions of political leadership, nor can they act as arbiters in controversies between local government and supervisory departments. The citizen is not, indeed, deprived of the opportunity to submit to proper tribunals specific grievances caused by administrative acts, but the administrative courts are advised not to obstruct the conduct of administration by voiding concrete

Loss of  
individual  
rights  
under  
Dictatorship

measures ; they may simply outline the correct administrative procedure. The right of forming any political party has been denied by the promulgation of a law of July 14, 1933. This law declares : "The National Socialist German Worker's Party is the only political party in Germany. Whoever undertakes to maintain the organization of another political party, or to form a new political party, is to be punished with imprisonment in a penitentiary up to three years or with confinement in a jail from six months to three years unless the act is punishable by a higher penalty under other provisions." A law promulgated on July 5, 1935, established the novel principle that the courts shall punish offences not punishable under the Criminal Code, if they are deserving of punishment according to 'healthy public sentiment.'

There are at present about 1,900 lowest courts of first instance, which can try petty civil and criminal cases. If the case relates to property in which the amount involved does not exceed 1,000 marks, it is tried by a single Judge. In the trial of more serious criminal cases the Judge is assisted by two Assessors. Over these are 174 courts, called *Landgerichte*, in each of which three Judges sit to deal with civil cases involving more than a thousand marks, and criminal cases which are not within the competence of courts of first instance. Appeals from the later are also decided in these courts. The *Landgerichte* can with one Judge and two Laymen try commercial cases. For the trial of capital cases, the *Landgerichte* are transformed into *Schwurgerichte* consisting of three Judges and six Laymen. Over these Courts there are twenty-nine *Oberlandesgerichte*, each of which contains criminal and civil panels consisting of three or five Judges. They exercise appellate jurisdiction. There are, besides this, the People's Courts, consisting of nine Judges to try cases of treason. The Supreme Court is the *Reichsgerichte*, which sits at Leipzig, and has one hundred Judges. It exercises a revisory jurisdiction over all inferior courts. Besides these, special Courts exist for all civil disputes arising from the relationship between employers and the employed. There are, moreover, 206 Sterilization Courts, which are composed of one Judge and two Medical men. Mentally and physically defective persons and all those who are thought unfit for propagation are sterilized by the decree of these courts

Present  
organisation  
of the  
Judiciary

## VII. The Civil Service

By the Civil Service Law of April 7, 1933 and its supplementary decrees severe restrictions have been put on the members of the Civil Service. The law applies not only to the regular

civil servants but also to the employees in semi-public enterprises and undertakings in which the government has a 50 per cent or larger financial interest. Judges, all court officials, notaries, teachers and professors, officials of the army, elected municipal officials are also included in the German Civil Service. Everyone of these officials has to swear to the following statement. "I herewith testify on oath that despite careful examination, no circumstances are known to me which could justify the supposition that I am not of Aryan descent or that one of my parents or grand parents at any time professed the Jewish religion. I am aware that I am liable to legal prosecution and dismissal from service if this declaration does not contain the truth." The Jews were thus effectively driven out of public and semi-public services. Another decree provides that "officials may be dismissed from service who because of their previous political activities do not offer surety that they at all times act unreservedly for the national state." This decree excludes all but the staunch adherents of the Nazi party from service

### VIII. Local Government in Germany

The spirit of local self-government has been effectively destroyed by the Municipal Ordinance of January 30, 1935. This decree places all German countries and municipalities, except Berlin on one single statutory foundation, thus substituting national legislation for state legislation. The Deputy Leader Hess appoints a party delegate for each municipality. The party delegate has no administrative function, but his consent is required for the adoption of the charter. He sends three names of qualified experts in administration after consultation with members of the Municipal Council to the Minister of Interior who selects from among them the Mayor and the Mayor's substitute. Municipalities of more than ten thousand inhabitants have whole-time salaried Mayor or his substitute. Whole-time Mayors are appointed for twelve years, and others for six years. The administrative responsibility for the conduct of local government is vested in the Mayor, who is helped by the advice of the Municipal Council. The Mayor must consult the Council before enacting ordinances and adopting the budget. But the advice of the Council is not binding on the Mayor. The members of the Council are not permitted to vote on any projects submitted to them. They are appointed by the party delegates in agreement with the Mayor for a term of six years.

### IX. The Organisation of Labour

A striking feature of the Weimer Constitution was the

establishment of the Economic Council. It laid down the following provisions: "For the protection of their social and economic interests, workers and salaried employees shall have legal representation in Workers' Councils for individual undertakings and in District Workers' Councils grouped according to economic districts and in a Workers' Council of the Reich. The District Workers' Councils and the Workers' Council of the Reich shall combine with representatives of the employers and other classes of the population concerned so as to form District Economic Councils and an Economic Council of the Reich for the discharge of their joint economic functions and for co-operation in the carrying out of laws relating to socialisation. The District Economic Councils and the Economic Council of the Reich shall be so constituted as to give representation thereon to all important vocational groups in proportion to their economic and social importance. All Bills of fundamental importance dealing with matters of social and economic legislation shall, before being introduced, be submitted by the Government of the Reich to the Economic Council of the Reich for its opinion thereon. The Economic Council of the Reich shall have the right itself to propose such legislation. Should the Government of the Reich not agree with any such proposal, it must nevertheless introduce it in the Reichstag, accompanied by a statement of its own views thereon. The Economic Council of the Reich may arrange for one of its members to advocate the proposal before the Reichstag. Powers of control and administration in any matter falling within their province may be conferred upon Workers' Councils and Economic Councils. The constitution and function of the Workers' and Economic Council are within the exclusive jurisdiction of the Reich." Thus in the Reich Economic Council, capital and labour were given the same number of members with equal voice in the discussion of both economic and social policy.

During the thirteen years preceding the Nazi revolution Trade Unions were accepted as the agencies for collective bargaining to set wages, hours and other conditions of employment. The Trade Unions more than doubled their membership during these years as compared with pre-war figures. But under the Hitlerite Dictatorship all Labour Unions and the corresponding employers' associations have been dissolved. A Labour Front including both workers and employers has been set up in May, 1933. Its organisation is regional as well as functional. The smallest unit of the Labour Front is constituted by the members in a single firm. These are gathered in 14,744 local groups. They are again collected into 821 districts and 32 regional groups. In its vocational aspect, the Labour Front is organized in 18 divisions. The law of January 20, 1934, forbids strikes and

The  
Economic  
Council

The Labour  
Front

lockouts. The work of the Labour Front is primarily social and educational. Its most notable achievement has been the success of the "Strength through Joy" association which provides its members with low-cost trips and excursions during holidays, and arranges sports, lectures, concerts and theatrical performances.

But these benefits have been purchased by labour at a very heavy cost "The workers are," writes Arthur Feiler in the *Survey Graphic*, "little better than slaves in the drive for rearmament. Strikes are forbidden. The workers are no longer free to move from town to town, plant to plant, even job to job. A man may change his situation only if the change fits into the aims of the regime. No employer is permitted to hire any employee without the explicit consent of the official Labour Exchange. According to the decree of February 1937, 'the individual's ambition or desires are subservient to the state's interest.' ..... During the September 1938 crisis, tens of thousands of workers were requisitioned from industry, and without even time to say good-bye to their wives and children, they were loaded into special trains and sent to work on the fortifications along Germany's western frontier. But in normal times too, as a writer in *Foreign Affairs* has recorded, "armies of workers are transported from one part of the country to another like prisoners of war."

Workers  
reduced to  
condition of  
slaves

## X. Characteristics of the Italian Constitution

The Sardinian Constitution of 1848 is, theoretically, the Constitution of Italy to-day. As successively Lombardy, Tuscany, Modena, Parma, Naples and Sicily, Venice and Rome were incorporated in Sardinia, the Sardinian Constitution was extended to these territories. Italy is a unitary state with a

The Italian  
Constitution  
of 1848

flexible constitution. The ordinary parliamentary enactment is sufficient to effect constitutional changes. It is due to this flexibility that the Italian Constitution has been able to assimilate all the changes brought into it by Signor Mussolini. "The flexibility of the Italian Constitution has saved it from complete submergence under the stress of the vigorous social and political reorganisation which has followed the War in Italy. If it had been a rigid constitution it would certainly by now have been broken, whereas it has up to this moment only been bent." We shall first of all describe the normal features of the Italian Constitution and then discuss the Fascist system of Government. As in England so in Italy there is a king. Up to 1919 the Italian King performed functions analogous to those of the English King. But since the appointment of Mussolini as Prime Minister, the king has been completely overshadowed.



There was a parliamentary executive in Italy before the inauguration of the Fascist regime. Article 65 of the Constitution of 1848 says that the Ministers are responsible to Parliament and that no laws or Governmental Act shall take effect until they have received the signature of a Minister. Now the executive is tending to become non-parliamentary or fixed

Nature  
of the  
Executive

## XI. The Fascist Government

Just after the Great War constitutional democracy in Italy was threatened with destruction by the growth of a strong Socialistic party in Parliament and of an equally strong Syndicalist movement outside the Parliament. Under the pressure of the demands of the Socialists and Syndicalists, Signor Gislitti, the Liberal Prime Minister, had to bestow upon the workers in the North a large measure of factory control in 1920. This measure roused the antagonism of many Italians who determined to fight the extra-parliamentary Syndicalist movement by organising local Fascist Committees. "The origin of the word Fascisti is the Latin "fasces," the bundle of twigs fastened around an axe, emblem of authority which the old Roman lictors carried when they accompanied the Consuls, and which symbolised the right to inflict corporal and, if necessary, capital punishment." The early Fascists punished the Syndicalists or Communists or Bolsheviks (they indifferently designated all three) whom they considered to be offenders against social peace and security. In July 1921, the Syndicalists declared a general strike and to subdue them Signor Mussolini asked the Government to hand over to the Fascists, within 48 hours, six seats in the Cabinet and the control of the Air Force. As these demands were refused, the Fascists moved towards Rome and encamped just outside the city in 1922 in a menacing attitude. The King then saved the situation by inviting Signor Mussolini to form a ministry. Thus the unconstitutional Fascist movement was harnessed to the chariot of constitutionalism.

Chaotic  
condition in  
post-war  
Italy

Origin of  
the Fascist  
Party

## XII. The Theory of the Fascist Government

The aim of Mussolini has been to establish a corporative state based on National Fascist Syndicalism. So long there had been an intense antagonism between Capital, Manual Labour and Intellectual Labour in every modern state. Fascist Syndicalism, claim its apologists, has put an end to this antagonism by subordinating all the three sections equally to the national interest. "The other democracies," said Mussolini in 1928, "are gnawed at by a terrible malady, namely, the absence

The  
Corporative  
State

of understanding. On the one side is Capitalism, shut up in its crenellated tower, on the other side is Labour, organised and armed by the double force of Socialism and Syndicalism covering the plain and always ready to deliver an assault against the dominating tower. And between the two camps, beneath a fragile, futile tent—the bourgeois state.”

In order to reconcile Labour with Capital, the Charter of Labour, which is regarded as the very Bible of the Fascist corporative state, and which has been published on April 21, 1927, describes the purpose of Labour “as <sup>The Charter of Labour</sup> the well-being of the producers and the development of the national strength. Professional or syndical organisation is free, but the recognised syndicate alone, under the control of the state, has the right of legally representing the employers and the employed, of stipulating for collective labour contracts for all belonging to its category and of imposing contributions on them. The collective contract is the expression of the solidarity of the various factors in production and is the means of reconciling the opposing interests of employers and employed and subordinating them to the superior interest of production

### XIII. Structure of the Fascist Government

The Fascist Party on the assumption of power in 1922 expressed its intention to preserve the existing political structure, and to govern within the framework of the Constitution of 1848. But during the last eighteen years so many <sup>Changes in the Constitution of 1848</sup> changes have been effected that nothing but the King and a fragment of the old Senate exist as relics of Parliamentary Government. In the place of subordination of the executive to the legislature, the Fascists have asserted the pre-eminence of the executive over the legislative power

The King, Victor Emmanuel III (born 1869), is the nominal head of the executive. Mussolini, the real head of the executive, declared in 1922: “We shall leave monarchy outside our game, because we think that Italy would look with suspicion on a transformation of the Government which would eliminate monarchy.” In 1925 he expressed the hope that the monarchy would not obstruct the Fascist revolution, and threatened that if it did, “we would have to abolish it, as it would be a question of life and death.” The monarch has not in any way interfered with the Fascist policy: on the other hand, he seems to have accepted Fascism without reservation. He assumed the title of Emperor of Ethiopia by the Royal Decree of May 9, 1936. The sum of 11,250,000 lire (£1=78½ lire on 4-11-39) per year has

been settled in 1919 as the Civil List and the Crown Prince gets an allowance of three million lire as allowance. "A king," observes Ogg, "with rather more power than parliamentary systems ordinarily permit, has been pushed entirely into the back-ground—not deprived of certain of his ceremonial functions, it is true, but assuredly shorn of all his discretion and influence."

The law of December 24, 1925, states that the executive power is to be exercised by the King with the aid of his Government.

The same law gives statutory recognition to the position of the Prime Minister as the "head of the Government." He is to carry on the Government until "the system of economic, moral and political forces, which raised him to power shall cease." By a decree of April 28, 1938, a new Statute of the Fascist Party was promulgated, whereby the position of the Duce was incorporated in the Constitution of Italy. The Prime Minister is independent of any parliamentary vote of confidence or censure. No motion can be laid before the Senate or the recently created Chamber of the Fasci and Corporations without the previous sanction of the Prime Minister. The other ministers are nominated by him. They are responsible to him, and not to Parliament. The law of November 25, 1926, provides death penalty for any act directed against the life, liberty or integrity of the Prime Minister. "Our Prime Minister," stated Rocco, Minister of Justice, before the Senate, "is the recognised head of the great political, economic and moral forces of the country and those represented in Parliament, the evaluation of whose importance is subject to the decision of the sovereign."

The Executive has the power to promulgate decrees having the force of law. The Government is empowered to amend the Penal Code, to modify the Civil Code and to reorganize the system of judicial administration. It is authorised to modify the laws concerning public safety.

The legislative authority is exercised, in theory, conjointly by the King and Parliament. But as has been stated above, the Government exercises good deal of legislative power. Parliament consisted before April 28, 1938, of the Senate and the Chamber of Deputies. The Chamber of Deputies, according to the electoral law of 1928, consisted of four hundred persons selected under a peculiar system. There are thirteen nation-wide Federations of Syndicates—one each for the employers and the employees in (1) Industry, (2) Agriculture (3) Commerce, (4) Banking, (5) Maritime and Aerial Transportation, and (6) Land Transportation and Inland Navigation, and a thirteenth for associations of artistes and other intellectuals, and professional classes. Eight

Position  
of the Duce,  
Mussolini

Law-making  
power of the  
Executive

The  
Chamber of  
Deputies

hundred candidates were designated by the twelve Syndicates of employers and employees and two hundred by the thirteenth Syndicate. From the one thousand names\* presented by these associations, the Grand Council of Fascists selected a list of four hundred names. This list used to be announced in the official gazette, and three weeks later was submitted to the electorate of the country, voting as one whole constituency. The electorate consisted of all males of 21 years of age and over, provided they had paid at least one day's salary to their appropriate syndicate. The ballot paper bore the formula "Do you approve the list of Deputies designated by the National Grand Council of Fascism?" and the answer was simply to be "Yes", or "No." The Chamber of Deputies had little power. It could discuss measures drafted by the Grand Council, and vote the budget.

Mussolini abolished the Chamber of Deputies on December 14, 1938. Its place has been taken by the Chamber of the Fasci and Corporations, which met for the first time on March 23, 1939. It is composed of 650 members of whom 150 members are elected by the National Council of the Fascist Party, and 500 members elected by the National Council of Corporations. The Duce of Fascism, the members of the Fascist Grand Council, with the exception of the Senators and the members of the Royal Academy of Italy are ex-officio members of this body. The President and Vice-Presidents are appointed by royal decree. The duties of the Chamber are performed by the full assembly, by the Budget General Commission and by the Legislative Commissions.

The Chamber of the Fasci and Corporations

The Senate is composed of the princes of the Royal House who are twenty-one years of age (now numbering 8) and of an unlimited number of members nominated by the King for life

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\*When the electoral law of 1923 came into force in March, 1929, the total number of candidates designated by the National Confederations of Fascist Syndicates was 800, made as follows :

|   |         |
|---|---------|
| Agricultural Employers (composed of 314,658 persons)  | 96      |
| Agricultural Employees (composed of 1,021,461 persons)  | 96      |
| Industrial Employers (composed of 71,459 members)   | 80      |
| Industrial Employees (composed of 1,300,000 members)  | 80      |
| Thus, though equal number of candidates was assigned to employers and employees, the employers were much smaller in number. |         |
| Commercial Employers and Employees  | 48 + 48 |
| Maritime and Air Transportation Employers & Employees   | 40 + 40 |
| Land Transportation and Inland Navigation Employers & Employees   | 32 + 32 |
| Bank Employers & Employees  | 24 + 24 |
| Professional Men & Artists  | 160     |
| Total   | 800     |

from among twenty-one specified categories†. The ordinary Senators must be of forty years of age. In October, 1938, the Senators numbered 357. Some members of the Senate have occasionally opposed the Fascist measures. But the Government is assured of a majority, and could in any case, obtain the necessary number of votes by appointing Fascist adherents to the Senate.

The Chamber of Fasci and Corporations has no right to discuss, much less to criticise the acts and projects of the government. It does not select the President, who is appointed by the royal decree. The President in turn selects the other officers. He also appoints and convokes the committees through which the Chamber carries on most of its work. The ostensible function of the new Chamber is to assist the government in making laws. The Chamber has the right to discuss and approve the following measures: bills of a constitutional character; general legislative delegations; the budget and financial reports of the state, of autonomous administrations of the state, and of any public agencies which are of national importance and which are directly or indirectly financed by the state. The Chamber can also be convoked to discuss and approve other bills when the government so wishes, or when such a step is proposed by a plenary session or by a Committee and is approved by Il Duce. Bills which are not laid before the Chamber as a whole are examined by the proper committee. Il Duce may submit, for special discussion and approval, any bill which he decides must be acted upon immediately. However, this normal procedure may be superseded by the issuance of royal decrees in the event of an emergency created by War or by financial difficulties, or when the legislative committees have not had time to finish their work within the time allotted to them. Vote is taken openly in the Chamber. Every contrary vote is considered as an act of insubordination.

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†These categories are as follows. (1) Archbishops and Bishops, (2) President of the Chamber, (3) Deputies having served for six years or in three legislatures, (4) Ministers of State, (5) Ministers' Secretaries of State, (6) Ambassadors, (7) Envoys having served for three years, (8) First Presidents and Presidents of the Court of Cassation and the Court of Accounts, (9) First Presidents of the Courts of Appeals, (10) The Attorney-General and Procurator-General, (11) Presidents of Chambers of Courts of Appeals having served three years, (12) Counsellors of the Court of Cassation and Court of Accounts, (13) Advocates and officials of public ministries having served five years, (14) Generals of Army and Navy, (15) Counsellors of State having served five years, (16) Members of Provincial Councils, (17) Prefects, (18) Members of the Royal Academies, (19) Members of the Supreme Council of Public Instruction, (20) Those who by their merits and services have honoured the country, (21) Persons who, for three years, have paid three thousand lire in direct tax.

against the Party; the voter automatically loses his seat in the Chamber and is excluded from public life

In September, 1928, the Fascist Grand Council has been legally established as an organ of the state. It has become "the supreme organ co-ordinating all the activities of the regime which arose out of the Revolution of 1922." It acts as a consultative body in considering the statutes, ordinances and policies of the Fascist Party, and as an advisory body on all questions of a constitutional character. Constitutional questions include succession to the throne, the attributes and prerogatives of the Crown, the composition and functions of the Grand Council, the Senate and the Chamber; the attributes and prerogatives of the head of the Government; the right of the Executive to issue decrees having the force of law; the organization of Syndicates and Corporations; relations with Papacy and international agreements involving territorial changes. The Secretary of the Fascist Party is also the Secretary of the Grand Council. The Grand Council consists of three categories of members, namely, (i) those who participated in the March on Rome, who are appointed to the Council for an unlimited period of time; (ii) a certain number of Ministers and other high dignitaries, appointed for as long as they hold their respective office; and (iii) an undetermined number of members, appointed for three years by Mussolini, the Head of Government. Members of the Grand Council receive no remuneration. It is, in reality, the ultimate source of both executive and legislative power, subject only to the Head of Government

# CHAPTER XXXIV

## CONSTITUTION OF JAPAN

### I. Introduction

Constitutional government is a new thing in Japan. Up to 1868, when the Emperor Meiji was restored to power, Japan was divided amongst a large number of feudal chiefs who ruled their own territories in semi-royal style. Like the western industrialism Japan wanted to introduce a liberal constitution of the western type. In 1882, the Government sent Prince Ito to make thorough investigations regarding western institutions and to find good models for the Japanese Parliament. Ito and his attendants mostly stayed in Germany and there studied the Constitutions of different countries. The influence of the Bismarckian Constitution of Germany is visible in the Japanese Constitution which was promulgated in 1889

Origin of the  
Constitution

### II. The Constitution

The Constitution of 1889 contains simply an outline of the principles involved, and there are many constitutional laws written and unwritten, which condition the functioning of state organs. The Constitution does not contain any provision regarding the composition of the Imperial Diet. Though the Japanese Constitution is a written one in principle, yet there are some spheres of Government which are not regulated by any statute. One of the important Conventions of the Constitution is that the Genro or Elder statesmen (at present only one, Prince Saionji, over 90 years of age) are consulted by the Emperor on the choice of a new Prime Minister.

Conventions  
of the  
Constitution

Revision of the Constitution itself must be initiated by the Emperor, and the Imperial Diet has the power of deciding only on such revisions as are indicated by him. No revision of the Constitution has been made since its establishment. Article 73 of the Constitution provides that an amendment to the Constitution, submitted by the Emperor, can be discussed only when two-thirds of the members of either House are present. It can be adopted by a two-third majority in both the Houses.

Amendment  
of the  
Constitution

### III. The Emperor

Sovereignty belongs entirely to the Emperor and all power is exercised in his name. The actual power of the Emperor at the

present time is much greater than that of any other monarch of the world. The Japanese Emperor is the highest Priest of the national cult of Shinto. He is in supreme command of the Imperial Army and Navy and exercises this power independently of the advice of Ministers with the help of the chiefs of the Naval and Military General Staffs. In exercising legislative power he gets the consent of the Imperial Diet as a rule. He may issue ordinances in cases of urgency without consulting the Diet. His power to issue ordinances for the government of colonies is unlimited by the Constitution. In carrying on the administration he must secure the counter-signature of the Minister concerned. Like the British monarch the Emperor "can do no wrong" and he is not subject to any law. He cannot be removed from the throne for any reason; and he is not to be held responsible for overstepping the limitations of law in the exercise of his sovereignty.

Powers and  
prestige of  
the Emperor

#### IV. The Privy Council

The Emperor is advised by the Privy Council on all matters which come within his executive authority, on all constitutional difficulties, on the composition of the Cabinet and on all proposed measures. It is composed of a President, Vice-President, and 24 Councillors, appointed by the Emperor on the advice of the Prime Minister. Cabinet members are entitled by virtue of their office to sit in the Privy Council and to vote.

Composition  
of the Privy  
Council

#### V. The Cabinet

The Japanese Cabinet is not known to law, but like the British Cabinet it exercises great power and influence. The Ministry is composed of thirteen State Ministers including the Prime Minister. The Cabinet includes the Ministers of the Foreign Affairs, Home Affairs, Finance, War, Marine, Justice, Education, Agriculture and Forestry, Commerce and Industry, Communications, Railways and Overseas Affairs.

Ministers in  
the Cabinet

There are four characteristic features of the Japanese Cabinet. First, the responsibility of Ministers, collective or individual, to the Diet is not clearly established either in law or custom. The Government can do whatsoever it likes in administrative affairs; and the Houses can express independently of each other their judgment on what the Government had done. They may present written appeals to the Emperor against the action of the Ministers. They can suggest administrative measures to the Government. The Diet has the right of investigating the conduct

Relation of  
Ministers  
with the  
Diet



of administration, although this is very narrowly limited and rarely used. It has the right of making inquiries on the responsibilities of Ministers, the right of receiving reports from the Government on the income and disbursements of the National Treasury and on serious diplomatic questions, unless they are such as require absolute secrecy.

Secondly, though not stipulated in the written Constitution, yet it is required under Japanese constitutional practice that the posts of War Minister and Navy may only be held respectively, by a General and an Admiral in active service. This practically gives either of the fighting services an unlimited veto right in the formation of a new Cabinet. The corporate spirit among the Japanese military and naval officers is so strong that no officer would accept office in a Cabinet without the approval of the majority of his colleagues. When at the beginning of the year 1937 General Ugaki was entrusted with the task of forming a Cabinet, this approval was not given and consequently Ugaki failed to form a ministry.

**Influence of  
the Army**

Thirdly, the power of initiative of suggesting candidates for the office of Prime Minister rests with Prince Saionji, who is the only living member of the Genro or Elder statesmen created at the time of inaugurating the Constitution.

**Selection of  
Prime  
Minister**

Fourthly, a Cabinet Advisory Board has been established in May, 1935, by an Imperial Ordinance. The function of the Board is to make investigations and find out conclusions on important national policies upon the request of the Cabinet or may present views on such policies to the Cabinet on its own initiative. The members of the Board are chosen by the Imperial order from among experienced statesmen or citizens.

**Cabinet  
Advisory  
Board**

## VI. The Diet

The Japanese Legislature or Diet consists of the House of Peers and the House of Representatives. The House of Peers is composed of all the Imperial Princes above 20 years of age, all Princes and Marquises above 30 years of age, and 18 Counts, 66 Viscounts and 66 Barons elected by the Peers of their respective ranks. Besides these there are Imperial nominees from among statesmen and scholars above 30 years of age, 4 members of the Imperial Academy and members elected by and from among the highest tax-payers. There are at present 409 members in all.

**Members of  
the Diet**

The House of Representatives is composed of members elected

in constituencies, sending three to five members each. The Electoral Law of 1925 has established universal male suffrage, the age qualification being 25 years; candidates must be 30 years of age. The present number of members of the House of Representatives is 440

Composition  
of the Lower  
House

The legislative authority of the two Houses is equal in theory and projects of law may be initiated in either. In theory, the Emperor exercises the legislative power with the consent of the Diet. But the power of legislative "consent" contains within it that of initiative.

Relation  
between the  
two Houses

The national budget must get the consent of the Diet. It is presented by the Government to the House of Representatives first, but consent to it must be accorded by both the Houses. But in case the Diet fails to vote the budget, the Government is empowered to carry out the budget of the previous year. The budget is confined to expenditure alone, revenue being determined by law. The Diet is convoked annually by the Emperor for a period of ninety days only. This period may be prolonged if necessary by an Imperial order.

The Budget

## VII. Party System

There are two great political parties in Japan—the Seiyukai and the Minseito. The Seiyukai Party corresponds very roughly to the Conservatives advocating the development of internal trade by subsidising industry and agriculture. The Minseito, like the old Liberals, believe in developing foreign trade on the basis of strict economy at home and good relations with foreign nations. Besides these two parties there are a few small groups of Proletariat parties. The militarists oppose both the great parties, though they themselves do not constitute a party in any sense of term

Two great  
parties

It is a peculiarity of Japanese party politics that both the Seiyukai Party and the Minseito Party are controlled by clans which are interested in particular industries. The former is controlled by the Mitsui clan which is chiefly interested in banking, manufactured goods, heavy industry and armaments. The Mitsubishi family concern lies behind the Minseito Party. It controls shipbuilding and engineering, marine insurance and warehousing, electrical engineering and air-craft construction. It will be seen that though the political parties are dubbed Moderates in foreign policy, yet war-like preparations are beneficial to their financial interests. In May, 1937, the Minseito and Seiyukai Parties combined to bring about the fall of the Hayashi Cabinet.

Influence of  
hereditary  
clans

### VIII. Present Tendency of the Japanese Constitution

The Japanese Constitution has practically broken down since the annexation of Manchuria in 1931. The invasion of Manchuria was undertaken by the Militarists on their own responsibility. The Minseito Government, which was then in power, had tried to restrain them in vain. The Minseito ministers resigned in December, 1931 and were replaced by the Seiyukai Cabinet with Innuikai as Prime Minister. Innuikai opened negotiations with China and immediately there arose a cry of lack of patriotism against him. Innuikai was murdered by young patriots with navy revolvers on May 15, 1932. After this incident Viscount Saito formed the Government, but the militarists became more powerful than ever. In February, 1936, a group of fanatical young officers assassinated Viscount Saito and Prince Takahashi, two of Japan's most eminent senior statesmen.

Japan's political structure to-day has been described by one writer as a half-way house to Fascism. There is no individual in Japan who in scope of personal power could be compared with Hitler or Mussolini. But there is very little freedom of the Japanese Press. Elections have become almost meaningless. The Hayashi Cabinet which resigned on May 30, 1937 did not include a single member, who was affiliated to a political party. The role of the Diet has been reduced to that of a powerless and irresponsible form of criticism.

Increase of  
Influence of  
the Army

Fascist  
tendency

Reduction  
of power of  
the Diet

## CHAPTER XXXV

### CONSTITUTION OF SOVIET RUSSIA

#### I. Origin of the Soviet Constitution

The autocratic rule of the Romanov dynasty, established in 1613, remained unshaken till the beginning of the twentieth century. The force which ultimately shook the omnipotent power of the Tsar to its very foundation was the rise of a class-conscious proletariat. The industrialization of Russia, which began in the second half of the nineteenth century, created a class of propertyless workers, numbering about three millions before the Bolshevik Revolution in 1917. The cause of the proletariat was championed by a group of radical intellectuals, who formed themselves into the Social Democratic Party in 1898. At the London Congress of 1903, the Social Democratic Party split up into two groups—the Bolsheviks (Majority) and the Mensheviks (Minority). The Bolsheviks advocated a policy of thorough-going revolution, which the Mensheviks favoured evolutionary methods.

The  
Bolshevik  
Party

The discontent of the people and the defeat of Russia in the Russo-Japanese War prepared the ground for the premature Revolution of 1905. A Soviet was formed in St. Petersburg in October, 1905; and its example was followed in a score of other Russian cities. The term 'Soviet' literally means any kind of council, but it has now come to denote a council of delegates chosen by the workers, soldiers or peasants in any factory, army or agricultural community. Lenin recognised the importance of the Soviet Organisation as early as 1905. The general strike which was proclaimed in October, 1905, completely paralysed the country's economic life. With a view to gain popular support, the Tsar had to issue a Manifesto promising the establishment of a Duma or Parliament elected by democratic suffrage and the recognition of civil liberties. The revolutionary movement was sternly suppressed. The Tsar failed to transfer any real power to the representatives of the people. The incompetent military organisation of the Tsarist Government during the World War precipitated a revolution in Russia, as a result of which the Emperor Nicholas II abdicated on March 12, 1917. A Provisional Government, under Prince George Lvoff, was set up by the Duma, but it retained power only up to May 16, 1917, when it was reorganized. Meanwhile Lenin returned from exile in April, 1917, and raised the slogan, "All power to the Soviets." On August 6, 1917, a new Cabinet was formed with M. Alexander Kerensky as Prime

Coming  
of the  
Soviet to  
power

Minister. Kerensky was unable either to control the Soviets or to elaborate a concrete programme which would have met the demands of the masses. On November 7, 1917 the Military Revolutionary Committee of the Petrograd Soviet seized the Government authority, and handed it over the next day to the All-Russian Congress of Soviets. The Bolsheviks, who assumed the name of the Communist Party in 1918 controlled the authority of the Soviet Government.

The Fifth All-Russian Congress of Soviets assembled in July, 1918 and adopted a Constitution for the Russian Socialist Federative Soviet Republic. Its provisions were, in the main, adopted for the Union of Soviet Socialist Republics in 1923. The Constitution has been changed, rather radically, by the 8th Congress of the Soviets, which met on December 5, 1936. This Constitution, which is at work at present, is popularly known as the Stalin Constitution. The Constitution of 1918 will be referred to as the first Constitution, that of 1923 as the second Constitution, and the present one as the third or Stalin Constitution.

The three  
Constitu-  
tions

## II. The Structure of Society and Rights of Individuals

The first twelve Articles of the Stalin Constitution describe the structure of society in the U. S. S. R. The Constitution declares "The economic foundation of the U. S. S. R. consists of the socialist economic system and the socialist ownership of the tools and means of production, firmly established as a result of the liquidation of the capitalist economic system, the abolition of private ownership of the tools and means of production, and the abolition of the exploitation of man by man. The land, its deposits, waters, forests, mills, factories, mines, railways, water and air transport, banks, means of communication, large state-organized farm enterprises and also the basic housing facilities in cities and industrial localities are state property, that is, the wealth of the whole people." In the first two Constitutions private property and collective farms had no place at all. But in the present Constitution the right of every collective farm and of household over the house, productive live-stock, poultry, small farm tools, a plot of land attached to the house for personal use and the subsidiary husbandry on the plot has been recognised. The law also allows small-scale private enterprise of individual peasants and handicraftsmen based on their personal labour, provided there is no exploitation of the labour of others. The Constitution also allows the right of personal property of citizens in their income from work and in their savings, in their dwelling house and auxiliary husbandry, in household articles and utensils and in

Russia is  
not a true  
Communist  
society

articles for personal use and comfort, as well as the right of inheritance of personal property of citizens.

The earlier Constitutions had no list of fundamental rights and duties of citizens; but the present Constitution has one. The first Constitution recognised simply freedom of religious and anti-religious propaganda; but the third Constitution grants freedom of performing religious rites to those who believe in any religion and the right of carrying on anti-religious propaganda to those who have no faith in religion. The Constitution guarantees to every citizen the right of remunerative work, the right to specified hours of rest and to holidays with pay, the right to free and unlimited education of every kind and grade, the right of women to fulfil the function of motherhood with all possible alleviation of the physical suffering involved, without pecuniary sacrifice or burden and further aided by universally organized provision for the care of infants and children, and above all, the right to full provision according to need, in all the vicissitudes of life. "All these new and unprecedented rights of man," writes Sidney Webb, "are guaranteed by the proposed Constitution, not merely to a ruling class, a dominant race, a favoured sex, or even a specially insured minority, but universally according to need, without individual insurance premium and without exclusion of sex or colour or social post, to all citizens in city or village, including the backward peoples of nearly 200 tribes throughout the vast continent." Over and above these special rights, the citizens of the U.S.S.R. are guaranteed freedom of speech, freedom of the press, freedom of assembly and the holding of mass meetings and freedom of street processions and demonstrations. But in reality, "the right of association is granted only to professional or social groups which have the government's approval, and attempts to form non-Communist political organisations or even independent Communist factions are promptly suppressed. The expression of unorthodox political or economic views, is barred in schools and universities."

Unprecedented  
rights of  
citizens

### III. Political Structure of the U. S. S. R.

According to the constitution of 1923 the U. S. S. R. was a close federation of seven Soviet Republics, namely, (1) the Russian Socialist Federal Soviet Republic (R. S. F. S. R. having

\*According to the Census of 1939 which was taken before the conquest of Poland, the number of citizens in U. S. S. R. is 170,126,000. According to the *Economic Hand-book of the Soviet Union*, published in 1931, the population of the Soviet Union is composed as follows: Russians 52.9, Ukrainians 21.2, White Russians 3.2, Kazakhs 2.7, Uzbeks 2.6, Tartars 2, Jews 1.8, Georgians 1.2, Azerbaijan Turks 1.2, Armenians 1.1 per cent. Other racial and national groups constitute less than one per cent of the total population.

105 million population), (2) the Ukrainian S. S. R. (32 million), (3) the White Russian S. S. R. (5·4 million), (4) the Trans-Caucasian Federation of S. S. Republics, (5) the Turkmen S. S. R. (1·2 million), (6) the Uzbek S. S. R. (5 million), (7) Tadzhik S. S. R. (1·3 million). Under the new Constitution the Soviet Union consists of eleven instead of seven member Republics. Armenia (1·1 million), Georgia (3·1 million), and Azerbaijan (2·8 million) which formed together the Trans-Caucasian Federated Republic have been made separate Republics, and the Kazakh (6·7 million) and Kirghiz (1·3 million) Republics, have also been raised in status and converted from autonomous republics within the R. S. F. S. R. into separate republics.

The Russian Socialist Federal Soviet Republics, include seventeen Autonomous Republics, a number of Territories, Provinces, and Autonomous Provinces. The Autonomous Republics are governed by their own Supreme Council and Council of People's Commissars. The purpose of these divisions is to guarantee cultural autonomy of every people.

The Constitution of the U.S.S.R. has got some of the features of federal government, but in reality it is a unitary government. The Union or Central Government has power over the following subjects: foreign relations, treaties, war and peace, admission of new republics, ensurance of the conformity of the Constitutions of the constituent republics with the Constitution of the U. S. S. R., defence and direction of all the armed forces, foreign trade on the basis of state monopoly, establishment of the national economic plans of the U. S. S. R., confirmation of the unified state budget of the U. S. S. R. as well as of the taxes and revenues which go to form the All-Union, the republic and the local budgets, administration of banks, industrial and agricultural establishments and enterprises and also of trading enterprises of All-Union importance; administration of transport and communications; direction of the monetary and credit system; organization of state insurance; contracting and granting of loans; establishment of the fundamental principles for the use of land as well as for the exploitation of its deposits, forests and waters, establishment of the fundamental principles in the domain of education of public health, establishment of the principles of labour legislation, legislation governing the organization of courts and judicial procedure, criminal and civil codes, and laws regarding citizenship of the Union. The powers of the Union Government are wider than those of the Federal Government of the U. S. A., Switzerland and the proposed Federal Government

The eleven  
Constituent  
Republics

Local Areas  
guarantee  
cultural  
autonomy

A unitary  
government  
with some  
features of  
federalism

of India. The wide scope of national planning, the right of confirming the taxes of the constituent republics, control over trade, agriculture and industry, regulation of education, public health, and administration of Justice leave very little scope for the constituent republics and tend to make the government a centralised one. By a misuse of the term 'sovereignty' the constituent republics are guaranteed "the sovereign rights". But from the theoretical point of view, the government cannot be called a unitary one, because Articles 17 and 18 declare: "The right freely to secede from the U. S. S. R. is reserved to each autonomous republic. The territory of the constituent republics may not be altered without their consent". The Soviet of Nationalities, the Second Chamber of the Legislature, represents the constituent and autonomous republics, autonomous provinces and national regions. The federal tendency, however, is more apparent than real, because according to Article 20 the All-Union law prevails over the law of a constituent republic in case of conflict between the two.

#### IV. The U. S. S. R. Legislature

The Legislature of the Union of Soviet Socialist Republics is called the Supreme Soviet or the Supreme Council of the U. S. S. R., which is declared as the highest organ of state power. It consists of two Chambers—namely, the Soviet of the Union, which is equivalent to the U. S. A. House of Representatives and the Soviet of Nationalities, which is the Russian counterpart of the U. S. A. Senate. <sup>The Lower Chamber</sup> The lower House, the Soviet of the Union, is elected by the citizens of the whole Union by electoral districts on the basis of one Deputy for every three lakhs of the population.

The franchise of the U. S. S. R. is conferred on the largest number of citizens ever known to history. All citizens of the age of 18 or over, with the exception of only those who are mentally deficient or are deprived by the courts of their civil rights are entitled to vote. The only other countries <sup>Franchise</sup> where persons of 18 are allowed to vote are Turkey, Argentina and Mexico, but none except Russia allows women of 18 to vote. Many disqualifications, such as anti-social occupation, family relationship to the late Tsar, and membership of a religious order, which were enforced in the first two Constitutions, have been removed now. The total number of persons who recorded their vote in the first election under the new Constitution on the 12th December, 1937, was over 91,113,153. It is to be noted that in British India, with a population of 271 million, only 36 million are enfranchised; whereas in the U. S. S. R.



with a population of 170 million, 91 million are entitled to vote. Another remarkable feature about Russian franchise is that it is regarded as a social obligation rather than a right; hence almost all the voters participated in the election. In the earlier Constitutions every 25,000 electors in towns were entitled to elect one representative, whereas in villages every 125,000 voters had one representative for the Provincial Congress. Such inequality between towns and villages has been removed by the new Constitution. But the Communist Party exercises such an influence in the country that there was not a single case of contested election for the eleven hundred seats in the Soviet of the Union in the last general election;

The Soviet of Nationalities is elected by the citizens of the U. S. S. R. by Constituent and Autonomous republics, Autonomous provinces and National Regions on the basis of twenty-five deputies from each Constituent republic, eleven deputies from each Autonomous Republic, five deputies from each Autonomous province and one deputy from each National Region. Both the Houses are elected for a term of four years. Both have equal rights with respect to legislation, though the Council of Nationalities is charged with the special task of protecting the interests of the various national groups in Union. In case of disagreement between the two Houses the question is referred for settlement to a Conciliation Commission. If the Commission does not come to an agreement or if its decision does not satisfy one of the Chambers, the question is considered a second time in the Chambers. Failing an agreed decision of the two Chambers, the Presidium of the Supreme Soviet of U. S. S. R. has the right of dissolving both the Houses and hold new elections.

The Supreme Soviet is too unwieldy a body to exercise real power and consequently it meets for very short periods twice a year and also in cases of emergency. It meets only to receive reports by government officials on such subjects as foreign and domestic policy, the progress of the Five-Year Plan, the position of the Red Army, to ratify the acts of government (as it did in September, 1939, in the case of Russo-German Pact) and similar other purposes.

The feature which distinguishes Russian legislature from that of democratic countries like England, France and the U. S. A. is that the former vests great powers in a body of 37 called the Presidium of the Supreme Soviet of the U. S. S. R., elected at a joint sitting of both Chambers. This body has the power to interpret existing laws and issue decrees; hold referendums on its own initiative or on the demand of one of the constituent republics, appoint and replace the high command of the armed forces and in the intervals

between the sessions of the Supreme Soviet of the U. S. S. R., declare a state of war "in case of an armed attack upon the U. S. S. R. or in case of the need of fulfilling international treaty obligations of mutual defence against aggression." Soviet Russia has fulfilled this part of the Constitution in a curious way in the case of conquest of Poland. The limitation on the power of the Government is on the declaration of war, but evidently not on conquest without any declaration. The Presidium can also, during the intervals between sessions of the Supreme Soviet of the U. S. S. R. declare general or partial mobilization, ratify international treaties, and appoint and recall plenipotentiary representatives of the U. S. S. R. to foreign states. Thus its powers are legislative (issuing decrees), judicial (interpreting existing laws) and executive in character.

The Constitution can be amended by decisions of the Supreme Soviet of the U. S. S. R. adopted by a majority of not less than two-thirds of the votes in each of its Chambers

Amendment  
of the Consti-  
tution

## V. The Executive Authority

The highest executive and administrative organ of state power of the U. S. S. R. is the Council of Peoples' Commissars. It is responsible to the Supreme Soviet, and between sessions of the Supreme Soviet to the Presidium. It has the right of issuing Resolutions and Orders on the basis of the existing laws; of co-ordinating and directing the work of the All-Union and Union Republic People's Commissariats and of the other economic and cultural institutions subordinate to it, taking measures to carry out the national economic plan and state budget, and fixing the annual contingent of citizens to be called for active military service.

Council of  
Peoples'  
Commissars  
i. e., Cabinet

The Council of Peoples' Commissars consists of thirty-two members\*. They belong to two categories—All-Union and

- 
- \* (1) Chairman of the Council of Peoples' Commissars and Commissars of Foreign Affairs—M. Stalin.  
 (2) Vice-Chairman of the Council—V. Y. Chubar.  
 (3) " and Chairman of the Soviet Control Commission—S. V. Kosior  
 (4) Chairman of the State Planning Commission—N. A. Varnesensky  
 (5) " of the Board of the State Bank—A. P. Grichmanov  
 (6) " of the Committee of Higher Schools—S. V. Kaftanov  
 (7) " of the Committee on Arts—A. I. Nazarov  
 (8) Peoples' Commissar of Home Affairs—L. Beriia  
 (9) " " of Defence—K. Y. Voroshilov  
 (10) " " of Navy—M. Frinovsky  
 (11) " " of Heavy Industry—L. M. Kaganovich  
 (12) " " of Machine Building Industry—A. D. Bruskin  
 (13) " " of Aeronautical Industry—M. M. Kaganovich  
 (14) " " of Warships—I. Tevosyan

Union-Republic. The former have power to direct the branches of administration entrusted to them directly throughout the arc of the U. S. S. R.; the latter have power to direct through like-named Peoples' Commissariats of constituent republics, and to direct only a definite number of enterprises according to a list confirmed by the Presidium. The following Peoples' Commissariats are All-Union Peoples' Commissariats: Defence, Foreign Affairs, Foreign Trade, Railways, Communications, Water Transport, Heavy Industry, Defence Industry. The following Peoples' Commissariats are the Union-Republic Peoples' Commissariats: Food Industry, Light Industry, Timber Industry, Agriculture, State Grain and Livestock Farms, Finance, Internal Trade, Internal Affairs, Justice, Health).

The Commission of Soviet Control consists of sixty tried and trusted members of the Communist Party, nominated by the Central Committee of the Party. It is charged with seeing to it that every important decree or directive of the Central Executive Committee i. e. the Council of Peoples' Commissars is actually complied with in every part of the U. S. S. R. It has its own Inspectors, Accountants and other Agents to carry out this purpose. These officers are independent of any local authority. This Commission acts in close conjunction with a Commission of Party Control. Thus, the Party makes itself the real sovereign of the state.

At present the executive authority has been centralized in the hand of M. Stalin who has become the Prime Minister as well as the Minister of Foreign Affairs in April, 1941. This assumption of direct authority by Stalin is likely to contribute to the efficiency and speedy execution of policy.

- 
- |      |                    |   |
|------|--------------------|---|
| (15) | Peoples' Commissar | of Military Equipment—B. Vannikoff        |
| (16) | "                  | " of Munitions—I. Sergeeff                |
| (17) | "                  | " of Fish Supplies—M. P. Smurnov          |
| (18) | "                  | " of Meat Supplies—Madam Z. M. Molotov    |
| (19) | "                  | " of Light Industry—V. I. Shestakov       |
| (20) | "                  | " of Timber Industry—N. Anzelovitch       |
| (21) | "                  | " of Railways—A. V. Bakulin               |
| (22) | "                  | " of Water Transport—N. I. Yezhov         |
| (23) | "                  | " of Communications—M. D. Berman          |
| (24) | "                  | " of Agriculture—M. Benediktov            |
| (25) | "                  | " of State Grain & Livestock—T. A. Yurkin |
| (26) | "                  | " of Purchase—M. V. Popov                 |
| (27) | "                  | " of Finance—A. G. Zverev                 |
| (28) | "                  | " of Trade—A. V. Linbimov                 |
| (29) | "                  | " of Foreign Trade—A. I. Mikoyan          |
| (30) | "                  | " of Justice—N. M. Rychkov                |
| (31) | "                  | " of Health—M. F. Boldyree                |
| (32) | "                  | " of Food Supplies—M. Zotoff              |

## VI. Judicial Organisation

The Supreme Court, elected by the Supreme Soviet of the U. S. S. R. for a term of five years, is the highest judicial organ of the State. Under the earlier Constitutions, Judges were appointed and removable by the Central Executive Committee. In case of a conflict between the laws of a Constituent Republic and the Union, the Supreme Court could only appeal to the Central Executive Committee to set this right. But now it has been vested with the power of "supervision of the judicial activities of all judicial organs of the U. S. S. R. and of the Constituent Republics." It has original jurisdiction over disputes between Constituent Republics, but it has never yet been called upon to exercise it. It exercises criminal jurisdiction in cases involving either persons of high position or charges of exceptional importance.

The Supreme Court

In each Constituent Republic the law courts are divided into People's Courts and Special Courts. The People's Court consists of the People's Judges and two Assessors, and their function is to examine as the First Instance, most of the civil and criminal cases, except the more important ones, some of which are tried at the Regional Court. The Regional Courts have original as well as appellate jurisdiction. The Judges of The People's Courts and Presidents and Members of the Regional Courts are elected for four years by the Soviet of the respective areas.

The Lower Courts

The Special Courts are (1) the Labour section of the People's Court, (2) Rural Commissions settling dispute in agrarian cases, (3) Arbitration Committees settling disputes between state organs concerning property rights, (4) Military Tribunals, and (5) Disciplinary Courts which deal with offences and neglect of official duties.

The Special Courts

## VII. Position of the Communist Party

The position of the Communist Party has been recognised by Article 126 of the new Constitution. The citizens of the State are ensured the right to unite in the Communist Party alone, which is referred as "the vanguard of the working people in their struggle to strengthen and develop the socialist system" representing "the leading nucleus of all organisations of the working people, both social and state."

Constitutional position of the Party

Every organ of administration is always headed by a Party member, who receives instructions not only from the political chief but also from the party chief. In every factory and in every collective farm, there is a Communist cell which watches the technical administration of the

Dictatorship of the Party

factory or the farm, and which receives instructions from the higher organs of the Communist Party. "In ~~this~~ way the members of the Party distributed over the whole mechanism of the State system represent the controlling power which drives the State machine in the direction required by the General Secretary of the Communist Party along the so-called 'General Party Line'. The purity of the Party policy and strict discipline are maintained by means of a special Party Code of Regulations and by systematic purges." The dictatorship of the Communist Party, with its two to three million members in a population of 170 millions, is frankly admitted by the leaders of Soviet Russia. "In the Soviet Union," writes Stalin, "in the land where the dictatorship of the proletariat is in force, no important political or organisational problem is ever decided by our Soviets and other mass organisations, without directives from our Party. In this sense, we may say that the dictatorship of the proletariat is substantially the dictatorship of the Party, as the force which effectively guides the proletariat."

The question that arises in this connection is whether the dictatorship of the Party does not mean the dictatorship of Stalin.

Nature of  
Stalin's  
Dictator-  
ship

Like Cromwell in England Stalin repudiates the suggestion that he is a dictator. Sidney and Beatrice Webb also hold that Stalin is not a dictator. They think that in the pattern of the Communist Party, individual dictatorship has no place, because decisions are always arrived at by discussions among colleagues. But in these discussions, Stalin is the "supreme analyst of situations, personalities and tendencies. Through his analysis he is supreme combiner of many wills." Moreover, he is so persistently boosted as the leader, that his leadership will last so long as he chooses to remain in that great position.

## CHAPTER XXXVI

### DEVELOPMENT OF THE INDIAN CONSTITUTION

#### I. Introduction

The position of the Indian Constitution at present is highly complex, illogical and anomalous. The Government of India Act of 1935, so far as it related to the Provinces, came into operation from 1st April, 1937. The declared object of the Act was to establish Provincial Autonomy. But the Government of India Amendment Act of 1939 has restricted the scope of provincial autonomy to a much narrower field than before. The Ministries have tendered their resignation in Madras, the United Provinces, Central Provinces, Bombay, Bihar, Orissa and the North-Western Frontier Province, and the Governors of these Provinces have proclaimed the breakdown of the Constitution in their respective jurisdictions. Ministers responsible to Legislature continue to discharge their functions in the Punjab, Sind, Bengal and Assam; but in the other Provinces the Governors have resumed all powers, under the Government of India Act, 1935, in their own hands.

Provincial  
Government  
at present

The position with regard to the Central Government is still more anomalous. While the Provinces are being governed under the Act of 1935, the Central Government is still being carried on mainly according to the provisions of the Montague-Chelmsford Constitution of 1919, though technically speaking Part XIII (Transitional Provisions) and the ninth Schedule of the Government of India Act, 1935, are now in force. The Order in Council dated July 3, 1936, declared that the Transitional Provisions would come in force on the 1st April, 1937, and would continue to operate up to the date of establishment of the Federation. But the Viceroy has declared on October 17, 1939, that the federal scheme has been suspended, and that at the end of the War it will be necessary to reconsider to what extent the details of the plan embodied in the Act of 1935 will remain appropriate. "I am now authorised," declared the Viceroy, "by His Majesty's Government to say that at the end of the War they will be very willing to enter into consultation with the representatives of the several communities, parties and interests in India and with the Indian Princes with a view to securing their aid and co-operation in framing such modifications as may seem desirable."

The Central  
Government

At present there is no organic relation between British India comprising 289·4 million population and the Indian States having

63·3 million people. There is no uniformity in the system of administration among the Indian States, which number 562, but of which 327 (having only eighty lakh population in all) may be regarded as Estates and Jagirs.

I shall describe, first, the history of constitutional development in India up to 1935, omitting the description of Central Government under the Act of 1919. Then I shall deal with the Provincial Autonomy as it has worked under the Act of 1935; then the existing Government at the Centre will be described. The Federal Scheme of 1935 and the trends of Indian politics will be described in the last chapter.

## II. Development of the Indian Constitution up to 1858

By the Charter of Queen Elizabeth the East India Company began to trade in India. Gradually the Company began to set up factories, build forts and acquire territories in India. Its affairs were conducted in the three establishments of Bombay, Madras and Calcutta, each by a Council of 12 to 16 members under a President. These three

Indian  
Constitu-  
tion before  
1772

became known as Presidencies, because of their government by President of the Council. The President had to take the consent of the Council for every step he took. Each Presidency was independent of others, but all were responsible to the Court of Directors in London. The Company may be said to have grown into a territorial sovereign in 1765, when it received the grant of the Dewani of Bengal, Behar and Orissa from the Mughal Emperor. Clive worked the Dewani or revenue administration through Indian agents, and left all police and executive business in the hands of the Nawab. This system worked so badly that it had to be given up in 1772, when Warren Hastings actually assumed the functions of Government.

The year 1773 is the starting point of the Indian Constitution. In that year Lord North's Ministry reviewed the Company's Charter by an Act of Parliament and changed its constitution, thus affirming the right of Parliament to control the British possessions in India. This Act is known as Lord North's Regulating Act. It established a Governor-General of Bengal with four Councillors. The Government of Bengal became the Central Government of India. It was to exercise supremacy over the Presidencies of Bombay and Madras. It authorised His Majesty to establish by a Charter a Supreme Court with a Chief Justice and three judges. The Governor-General-in-Council was empowered to make any Regulation for the conduct of Government and the administration of justice with ultimate sanction of the Home Government. The Governor-General was to be bound by the votes of the majority of his Councillors.

Beginning  
of centra-  
lised  
authority

There were grave defects in the Act. It did not define what the supremacy of Bengal meant ; it allowed the Governor-General to be outvoted and over-ruled whenever three members of his Council chose to combine against him. Moreover, no body could tell what law was to be administered by the Supreme Court. The jurisdiction of the Supreme Court also was not defined.

Vagueness  
of the  
Regulating  
Act

### Pitt's India Act

Various Parliamentary enquiries were held and Fox's famous India Bill was introduced. This was defeated in the House of Lords. Then Pitt with a Parliamentary majority at his back passed the Act of 1784. It created the Board of Control to supervise the Indian affairs. It consisted of four Privy Councillors, the Chancellor of Exchequer and one of the Secretaries of State. Its task was to superintend and direct all the acts of the East India Company and it had also the power of approval and disapproval of the policy of the Court of Directors.

The Board  
of Control

All secret orders of the Directors had to be referred to the Board of Control. But the Company reserved the right of appointing certain high officials. Thus, from 1784 to 1858 there was the double government of India by the Board of Control and the Court of Directors. Pitt's India Act also curtailed the number of Governor-General's Councillors from four to three. The control of the Governor-General in Council over the minor Presidencies was enlarged, and was declared to extend to all such points as relate to any transaction with the country powers, or to war or peace or to the application of the revenue or forces of such Presidencies in times of war.

Dual  
Government  
from  
England

The Act of 1786 empowered the Governor-General to override the majority of the Council and to act in his own responsibility. The Charter Act of 1793 empowered the Governors of Bombay and Madras to override their Councils. Two of the junior members of the Board of Control were no longer required to be Privy Councillors.

The Acts of  
1786 and  
1793

The act of 1797 reduced the number of ordinary judges to two. An Act of 1807 empowered the Governors and Councillors of Bombay and Madras to make Regulations. The Charter Act of 1813 limited the trading function of the Company and made provision for granting aid to education.

First State  
grant to  
education

The Charter Act of 1833 was the most important of all the Acts passed by Parliament with regard to India between 1784 and 1858. The Act changed the title of the Governor-General in Council of Bengal into the Governor-General

Complete  
Centralisa-  
tion



in Council of India. It declared that the territorial possessions of the Company were held in trust for His Majesty for the service of the Government of India. It deprived the Governors and Councils of

**Legislative  
Centralisa-  
tion**

Bombay and Madras of their independent powers of law-making, and vested this power in the Governor-General-in-Council of India. It added to the Governor-General's Council for the satisfactory work of codification a fourth member who was to be an English Barrister. This was the germ out of which the Indian legislature has developed. The Company was compelled to close its commercial business and it became a purely administrative and political body.

The Charter Act of 1853 provided that the Indian territories were to remain under the Company until 'Parliament should otherwise direct.' The power of appointing high officials was taken away from the Court of Directors and the Indian Civil Service was thrown open to general competition. The Act also enlarged the Legislative Council by adding some new members.

**Loss of  
patronage by  
Directors**

The Act of 1858 transferred the Government of India from the Company to the Crown acting through the Secretary of State in Council. The Governor-General became the Viceroy.

**Assumption  
of power by  
Crown**

The post of the Secretary of State for India was created. All the powers that were formerly exercised by the Court of Directors and the Board of Control were transferred to the Secretary of State in Council. The Council of the Secretary of State was to consist of fifteen members of whom eight were to be appointed by the Crown and seven elected by the Directors of the East India Company.

### III. Growth of Legislative Councils in India (1833-1919)

There was no special machinery for law-making in India before the year 1833. The Executive Government used to

**Beginning  
of Indian  
Legislature**

make Regulations before that date. The germ from which all the special Legislative Councils may be said to trace their descent is to be found in the Charter Act of 1833. By that Act a special Law Member was added to the Governor-General's Council. He was not a member of the Executive Council; but when he sat in the Executive Council, it became a law-making body. That is to say, he sat with other Councillors for legislative business only. Henceforward the Regulations became known as laws, because they were enacted, not by an executive body, but by a special legislative body. The same Act abolished the regulation-making authority of the Bombay and Madras Governments.

**Legislative  
Centralisa-  
tion, 1833**

But these two Governments complained that all the members of the Council belonged to Bengal and as such had no local knowledge of Madras and Bombay.

To remove this defect the Legislative Council was enlarged in 1853 to twelve members. The Law Member became a full member of the Executive Council. Besides the six members of the Governor-General's Council, including the Governor-General, six "additional" members were to be called in. When the Executive Council was thus to be enlarged, it would be called the Legislative Council. The six "additional" members were to be the Chief Justice and another judge of the Bengal Supreme Court, and four officials appointed by the provincial Governments of Madras, Bombay, Bengal and Agra. But this arrangement too suffered from some serious defects. The British Indian Association of Bengal, the Bombay Association and the Native Association of Madras as well as the Press in India had demanded in 1853 the inclusion of some Indians in the Legislative Council. The Act did not make any provision for meeting their demand. The Mutiny showed the danger of the total exclusion of Indians. Moreover, it was realised that a single Legislative Council could not handle matters with adequate information and experience of so large a territory like British India. Then again the Executive authority was highly displeased with the Legislative Council, because it arrogated to itself the right of inquiry into and redress of grievances.

Enlargement  
of the  
Council,  
1853

The Indian Councils Act of 1861 tried to remove these defects. This Act has been called 'the Primary Charter of the present Indian Legislatures, because it admitted for the first time the principle of non-official representation. The Act provided that the Legislative Council was to consist of the Executive Council with not less than six or more than twelve "added members" nominated by the Governor-General for two years. Of these "added members," at least half were to be non-official persons. The functions of the new Legislative Council were limited strictly to the consideration and enactment of legislative measures. It had no deliberative or taxative power. It could not enquire into grievances, call for information or examine the conduct of the Executive. Any measure affecting the Public Debt or Public Revenue, foreign relations, discipline of the army and navy or religion could not be introduced without the previous sanction of the Governor-General. The Governor-General could veto any law passed by the Council. He was empowered in cases of emergency to make ordinances for the peace and good government of the British provinces in India.

Indian  
Councils  
Acts of  
1861

Restrictions  
on the  
powers  
of the  
Legislature

The power of law-making which had been taken away from the Governments of Madras and Bombay by the Act of 1833 was

now restored to them, their Councils being similarly enlarged for legislative purposes. The Governor-General in Council was empowered to set up Legislative Councils in other Provinces. Not less than one-third of the members of any Council, so set up were to be non-officials. Legislative Councils were established accordingly in Bengal in 1862, in the United Provinces in 1886, in the Punjab and Burma in 1898, and the Eastern Bengal and Assam in 1905, in Bihar and Orissa in 1912 and in C. P. in 1913.

The years between 1861 and 1892 saw the birth of Nationalism in India. The spread of English education, the researches into Indian history and culture, the establishment for facilities for transport and communication, the religious reforms, as well as the trend of events in Europe contributed to the growth of national sentiment in India. Political associations, both in India and in England (like the East Indian Association of Dadabhoi Naoroji) demanded that the elected representatives of the peoples should be included in the Legislative Councils. The Indian National Congress was founded in 1885 and the educated public of India began to make agitation for an increased share in the legislation and administration of the country.

Lord Dufferin realised that something must be done to meet the demands of the educated public. In 1888 he recommended the enlargement of the Legislative Councils and the investing of greater powers to them. The result of the agitation was the India Councils Act of 1892. It made a limited and indirect provision for the use of the method of election in filling up some of the non-official seats. The term election was not used in the statute; the process was described as nomination made on the recommendation of certain bodies: In the case of the Indian Legislative Council five more "additional" members were brought in, one being recommended by the non-official members of each of the four Provincial Councils, and one by the Calcutta Chamber of Commerce.

The Swadeshi Movement of 1905 created a situation which necessitated further extension of legislative bodies. The development of a new conception of the British Empire, too, was responsible for the next forward step in constitutional advance in India. Lord Irwin points out that "the Morley-Minto reforms was the work of the Parliament that extended responsible self-government to the erstwhile Boer Republics of the Transvaal and Orange Free State."

The Morley-Minto Act of 1909 increased the number of "Additional members" in the Central Legislative Council from 16 to 60. Not more than 28 of them were to be officials. The

Governor-General nominated five non-officials. These 33 nominated members constituted an official bloc and 27 were elected. The elective principle was for the first time legally recognised. The electorates constituted for the Indian Legislative Council were the following :—(a) The non-official members of the provincial Legislative Councils elected 13 members in all ; (b) the larger land-holders in six provinces, elected one member each ; (c) the Muslims of approved standing in six provinces, one member each ; (d) the European Chamber of Commerce, Calcutta and Bombay, one member each

Morley-  
Minto Act  
of 1909

The official majority was abandoned in the local Councils and their size was also increased. The functions of the Councils were greatly increased. The Act of 1892 gave members power to discuss budget but not to move resolutions about it. According to the new Act, not only the budget, but on all matters of general public importance general resolutions might henceforth be proposed and divisions taken. The resolutions were to be expressed and to operate as recommendations to the Executive Government. Any resolution might be disallowed by the head of the Government acting as President of the Council without giving any reason. At the same time the right to ask questions to the Government was enlarged by allowing the members who asked the original question to put a supplementary one. The chief defect of the Morley-Minto Constitution was that the existence of the official bloc raised racial prejudices in the hearts of Indian members, whose resolutions were often thrown out by the silent phalanx of the Government. Moreover the Councils represented so much of sectional interests that there were very few members to represent the general interests of the people

#### IV. General Principles of the Constitution of 1919

The Montague-Chelmsford Report laid down four general principles on which the Constitution was to be based. These principles formed the basis of the Government of India Act, 1919. (1) "There should be as far as possible complete popular control in local bodies and the largest possible independence for them of outside control. (2) There provinces are the domains in which the earlier steps towards the progressive realisation of responsible government should be taken. Some members of responsibility should be given at once, and our aim is to give complete responsibility as soon as condition permit. This involves at once giving the provinces the largest measure of independence, legislative, administrative and financial, of the Government of India which is compatible with the due discharge by the latter of its own responsibilities (3) The Government of India must remain wholly responsible to Parlia-

Introduc-  
tion of  
Dyarchy

ment. The Indian Legislative Council, however, should be enlarged and made more representative and its opportunities of influencing Government increased. (4) In proportion as the foregoing changes take effect, the control of Parliament and the Secretary of State over the Government of India and Provincial Governments should be relaxed."

## V. The Control Exercised by British Parliament

The Government of India Act, 1919 specifically reserved certain powers to the Crown. These powers could not be affected or modified by any law-making power vested either in the Secretary of State or the Governor-General in Council. The most important of these powers were the following:—(1) A Bill passed by the certificate of the Governor-General or a Governor could not come into effect without the signification of the assent of His Majesty in Council. The Governor-General might reserve a provincial Bill for the signification of His Majesty's pleasure without which it could have no validity. The power of veto was reserved to the Crown both in regard to the Acts of the Central and Local Legislatures. (2) The Crown made the following important appointments:—Auditor of the Accounts of the Secretary of State in Council, the High Commissioner for India, the Governor-General, the members of the Governor-General's Executive Council, Governors, the members of a Governor's Executive Council, permanent Chief Justices, Judges of High Courts and Advocates-General. (3) The Crown could establish new High Courts and disallow any order of the Governor-General in Council altering the limits of jurisdiction of High Courts.

The powers enumerated above were exercised by the Crown-in-Council, that is, by the Cabinet. There are other important matters in which the control was exercised by the Crown-in-Parliament, that is, through the Secretary of State, who is a member of the British Cabinet. The Secretary of State for India is the immediate agent of Parliament for the discharge of its responsibilities in Indian affairs. The Government of India Act prescribed his powers and so defined the region within which he might be held to account by Parliament. He was authorised by the Act to superintend, direct and control all acts, operations and concerns which related to the Government or the revenues of India; and the Governor-General, and through him the provincial Governments, were required to pay due obedience to the orders of the Secretary of State "These powers," stated the Simon Commission, "are exercised to an extent very much less than literal interpretation of the Act would warrant...

Control  
vested in  
the Crown

Control  
exercised by  
the Crown  
or by the  
Secretary of  
State in  
Council

.....The essential process of delegation has gone on intermittently for many years before the reforms, but the policy underlying the Act of 1919 gave it a strong impetus. Delegation, it will be understood, differs from a statutory Devolution of Powers, in that it does not relieve the Secretary of State from his responsibility to Parliament "

The control of the Secretary of State was greatly relaxed over the Provincial Transferred Subjects. It was laid down in Section 19A that the Secretary of State would exercise control over the Transferred Subjects only for the following purposes—(1) To safeguard the administration of Central Subjects; (2) to decide questions arising between two provinces, in cases where the provinces concerned fail to arrive at any agreement; (3) to safeguard Imperial interests; (4) to determine the position of the Government of India in respect of questions arising between India and other parts of the British Empire; (5) to safeguard the due exercise and performance of any powers and duties possessed by or imposed on the Secretary of State or the Secretary of State in Council under or in connection with or for the purpose of the following provisions of the Act, namely, Section 29A, Section 30 (1A), part VIIA of any rules made by or with the sanction of the Secretary of State in Council.

Limitation  
of powers  
of the  
Secretary of  
State

The previous sanction of the Secretary of State in Council was necessary (1) for the creation of any new or the abolition of any existing permanent post, or the increase or reduction of pay drawn by the incumbent of any permanent post if the post in either case was one which would ordinarily be held by a member of an all-India service, or to the increase or reduction of the cadre of an all-India service; (2) for the creation of a permanent post on a maximum rate of pay exceeding Rs.1200 a month or the increase of the maximum pay of a sanctioned post an amount exceeding Rs 1200 a month; (3) for the creation of a temporary post with pay exceeding Rs.4000 a month or to the extension beyond a period of two years of a temporary post (or deputation) with pay exceeding Rs.1200 a month; (4) for the grant to any Government Servant or to the family or other deceased Government Servant of an allowance, pension or gratuity which was not admissible under rules made or for the time being in force under Section 96B of the Act except in the following cases: (a) Compassionate gratuities to the families of government servant left in indigent circumstances, subject to such annual limit as the Secretary of State in Council may prescribe; (b) pensions or gratuities to government servants wounded or otherwise injured while employed in government service or to the

Cases in  
which the  
previous  
sanction  
of the  
Secretary of  
State was  
necessary

families of government servants dying as the result of wounds and injuries sustained while employed in such service, granted in accordance with such rules as have been or may be laid down by the Secretary of State in Council in this behalf : (5) to any expenditure on the purchase of imported stores or stationary otherwise than in accordance with such rules as may be made in this behalf by the Secretary of State in Council. The control of the Provincial Legislature over the Transferred Subjects was complete subject to the restrictions noted above

Over the Reserved and Central subjects no statutory relaxation of the control of the Secretary of State was made. The Joint Parliamentary Committee recommended the establishment of a Convention that, in matters of purely Indian interest where Government and the Legislature of India would be in agreement, the Secretary of State should not as a rule intervene, except under exceptional circumstances. By the Fiscal Convention the Government of India has been given liberty to devise the tariff policy best suited to the interests of India. The Secretary of State's intervention is limited to safeguarding the international obligations of the Empire or any fiscal arrangement within the Empire to which His Majesty's Government is a party. The Secretary of State has also relinquished his control of policy in the matter of the purchase of government stores for India, other than military stores. As regards legislative control, Bills to be introduced in the Central Legislature need not be referred for the approval of the Secretary of State in Council, unless they relate to subjects like imperial or military affairs, foreign relations, rights of European British subjects, the law of naturalisation, the public debt, customs, currency and shipping. There is one serious limitation to the power of the Indian Legislature: "The Indian Legislature has not power, without the previous approval of the Secretary of State in Council, to make any law empowering any court other than a High Court to sentence to the punishment of death any of His Majesty's subjects born in Europe, of the children of such subjects, or abolishing any High Court."

Secretary of  
State's  
control over  
Reserved  
and Central  
Subjects

## VI. The Council of India

With the Secretary of State was associated the Council of India, popularly known as the India Council. It consisted of eight to twelve members, appointed by the Secretary of State for five years. A member of the Council could only be removed from his office by His Majesty on an address of both Houses of Parliament. Half the

Composition  
and function

Council consisted of persons who had served or resided in India for at least ten years, and who had not left India more than five years before their appointment. The concurrence of a majority of votes at a meeting of the Council was necessary for certain classes of questions only. The most important of these were : (a) grants or appropriations of any part of the revenues of India ; (b) the making of contracts for the purpose of the Act ; (c) the making of rules regulating matters connected with the Civil Services and, in particular, regulating the general conditions under which the more important officials serve. Indian publicists thought that the Council only retarded useful reforms and unnecessarily intervened in matters of detail. Mr. Ramsay MacDonald said of it . "And this Council is non-representative ; it acts of its own untrammelled will ; it is not directly responsible to Parliament. This constitutional anomaly could not have existed for a generation if Parliament had taken an active interest in Indian Affairs."

## VII. Central and Provincial Subjects in the Constitution of 1919

The Constitution of 1919 divided the functions of Government into Central Subjects and Provincial Subjects. The principle of division was that where the interests of the whole of British India were concerned the subject was treated as Central, while on the other hand, all subjects in which the interests of a particular province essentially predominated were Provincial. The reserve of powers, that is, matters not included in the schedule of Provincial or Reserve Subjects, belonged to the Central Government. Thus, in the distribution of powers the Canadian, rather than the Australian model was followed in India. In cases of doubt the Governor-General in Council decided whether a subject was Central or Provincial.

The following were the most important Central Subjects : military matters, foreign affairs, relation with States, tariffs and customs, railways, post and telegraphs, income-tax, currency, coinage and the public debt, commerce and shipping, civil and criminal law, control of cultivation and manufacture of opium and sale of opium for export, geological, botanical, archaeological, zoological and meteorological surveys, census and statistics, copy right, and the Public Service Commission.

The most important Provincial Subjects were .—Local Self-Government, medical administration and public health, education, public works and irrigation, land revenue administration, famine relief, agriculture, forests, police, prisons and administration of justice.



### VIII. Dyarchy

The Executive Government of Bengal, Bihar and Orissa, Assam, U. P., C P., the Punjab, the N. W. Frontier Province, Bombay, Madras and Burma consisted of two halves.

**Meaning of Dyarchy** One part comprised the Governor and his Executive Council ; the other part, the Governor and his Ministers. The members of the Executive Council were nominated by the Crown, while the Ministers were selected by the Governor from amongst the members of the Provincial Legislature. The Governor in his Executive Council administered certain subjects known as "Reserved" and was responsible for them to the Central Government and ultimately to Parliament. The Governor in his Ministry dealt with the Transferred Subjects. The members of the Executive Council were not responsible to the Legislature, while the Ministers were responsible to it. This division of Government into two halves was known as Dyarchy.

The Transferred Subjects were :—Local Self-Government. e.g., matters relating to the constitution and powers of Municipal Corporations and District Boards ; Public Health, Sanitation and Medical Administration, including Hospitals and Asylums and provision for Medical Education, Education of Indians, excepting certain Universities and similar institutions; Public works, including Roads, Bridges and Municipal Tramways, but excluding Irrigation; Agriculture and Fisheries; Co-operative Societies; Excise; Forests in Bombay and Burma only; Development of Industries, including Industrial Research and Technical Education.

The main Reserved Subjects were :—

Administration of Justice, Police; Irrigation and Canals, Drainage and Embankments, Water Storage and water power; Land Revenue Administration, including assessment and collection of Land Revenue, Land Improvement and Agricultural Loans, Famine Relief; Control of Newspapers, Books and Printing Presses; Prisons and Reformatories; Borrowing money on credit of the Province, Forests, except in Bombay and Burma; Factory inspection, Settlement of Labour Disputes, Industrial Insurance, and Housing.

### IX. Position of the Governor under Dyarchy

The Governor was responsible for the good government of the Province. He was assisted in the discharge of his duties by the Executive Council and the Ministers. The Executive Council in Bombay, Madras and Bengal consist of four

members, and in other Provinces of two members. Half the number of Executive Councillors was appointed from the rank of civilians and half from provincial public life. The Governor entrusted each member with certain departments. Matters of importance and all points of dispute and all lines of general policy had to be put before the meetings of the Executive Council. The Governor normally presided over the meetings. If a difference of opinion amongst members arose, the decision of the majority prevailed. In case of equal division the President exercised his casting vote. But this rule was qualified by the following provision—"Provided that whenever any measure is proposed before a Governor in Council whereby the safety, tranquillity or interests of his province, or of any part thereof, are or may be in the judgment of the Governor, essentially affected, and he is of opinion either that the measure proposed or to be adopted and carried into execution, or that it ought to be suspended or rejected, and the majority present at a meeting of the Council dissent from that opinion, the Governor may, on his own authority and responsibility, by order in writing, adopt, suspend or reject the measure, in whole or in part."

The Executive Council of the Governor

The Governor appointed Ministers from amongst the members of Provincial Legislature. The Ministers served two masters—the Governor and the Legislative Council. The Governor allocated to each minister the charge of certain departments from among subjects which were declared Transferred. Section 52 provided that in relation to Transferred Subjects, the Governor should be guided by the advice of his Ministers, "unless he sees sufficient cause to dissent from their opinion, in which case he may require action to be taken otherwise than in accordance with that advice." The Instrument of Instructions to Governors, however, gave a wide latitude to Governors in setting aside the advice of their Ministers. The Instructions ran as follows: "In considering a Minister's advice and deciding whether or not there is sufficient cause in any case to dissent from his opinion, you shall have due regard to his relations with the Legislative Council and to the wishes of the people of the Presidency as expressed by their representatives therein."

Governor's relation with Ministers

The Governor exercised in one sense greater authority over the Transferred than over the Reserved Subjects. Decisions as regards the Reserved Subjects were generally arrived at as a result of mutual discussions and by vote in the Executive Council. But the Governor was not constitutionally bound to consult the Ministers together. In constitutional theory, each Minister was self-sufficient and had

Governor's power over Transferred Subjects

nothing to do with his immediate colleagues. The Governor usually consulted the Ministers individually. On numerous occasions in each Province the Governor set aside the decision of the Minister.

When there was any dispute as to whether a subject should be treated as Reserved or Transferred, the Governor alone decided the matter. His decision was taken as final. There were questions which affected both sides of the executive. Such questions were taken up in the joint meetings of the Executive Council and the Ministers under the presidency of the Governor. On this point the Simon Commission observe :—"Under Dyarchy as conceived by its authors, though there may be a joint discussion, there can be nothing which strictly corresponds to a "Cabinet decision," i. e., there can be no decision for which the two halves of the Government are jointly responsible. In some Provinces, and under some Governors, there has been a very near approach to Cabinet decisions, but this was because of a departure from the strict theory of Dyarchy. If the Dyarchical distribution of function is strictly observed, ultimately the Governor must decide exactly where the jurisdiction for decision lies, and the decision must be made and recorded accordingly "

Joint  
meetings of  
the Council  
and the  
Ministry

## X. The Provincial Legislature

The Act of 1919 provided that at least 70 per cent of the members of a Legislative Council should be elected ; not more than 20 per cent to be nominated officials and the rest to be nominated non-officials. The following table, given in the Simon Commission Report illustrates the composition of the Provincial Legislative Councils under the Mont-ford Constitution.

Composi-  
tion of the  
Provincial  
Legislative  
Councils

| Province          | Elected | Nominated Officials plus<br>Executive Councillors | Nominated<br>Non-Officials | Total |
|-------------------|---------|---|----------------------------|-------|
| Madras            | 98      | 7 + 4   | 28                         | 182   |
| Bombay            | 86      | 15 + 4  | 9                          | 114   |
| Bengal            | 114     | 12 + 4  | 10                         | 140   |
| United Provinces  | 100     | 15 + 2  | 6                          | 128   |
| Punjab            | 71      | 13 + 2  | 8                          | 94    |
| Behar and Orissa  | 76      | 13 + 2  | 12                         | 108   |
| Central Provinces | 55      | 8 + 2   | 8                          | 78    |
| Assam             | 39      | 5 + 2   | 7                          | 58    |
| Burma             | 80      | 14 + 2  | 7                          | 108   |

The constituencies were not only divided into urban and

rural, but also into General or non-Muhammadan, Muhammadan, European, Sikhs etc. In the non-Muhammadan constituencies in several Provinces, seats were reserved for special communities like the non-Brahmins in Madras and the "Marathas and allied castes" in Bombay. Besides these, there were constituencies of Landholders, of the University and of Commerce and Industry. Thus, representation was not only territorial but also of communities and interests.

The term for which a Legislative Council was elected was three years, but it could be dissolved earlier or its life might be extended for a period not exceeding one year at a time by the Governor. The Council had the right to elect its own President and Deputy President. The functions of the Council are divided into Legislative, Administrative and Financial.

Different  
kinds of  
Constitu-  
encies

Powers and  
functions  
of the  
Legislative  
Council

Every bill intended to have legal application within the jurisdiction of the Province was to be passed by the Council whether it pertained to the one or the other half of the Government. But a Provincial Legislature had no power to make any law affecting any act of the Central Legislature or of Parliament. It could not, without the previous sanction of the Governor-General, make or take into consideration any law—(a) imposing or authorising the imposition of any new tax unless the tax is a tax scheduled as exempted from this provision by rules made under this Act ; or (b) affecting the public debt of India, or the customs duties, or any other tax or duty for the time being in force by the authority of the Governor-General in Council for the general purpose of the Government of India ; or (c) affecting maintenance of the discipline of any part of His Majesty's naval, military or air forces ; or (d) affecting the relations of the Government with foreign Princes or States ; or (e) regulating any central subject or (f) regulating any provincial subject which has been declared by rules under this Act to be either in whole or in part, subject to legislation by the Indian Legislature, in respect of any matter to which such declaration applies ; or (g) affecting any power expressly reserved to the Governor-General in Council by any law for the time being in force ; or (h) altering or repealing the provisions of any law which, having been made before the commencement of the Government of India Act, 1919, by any authority in British India other than that of local legislature, is declared by rules under this Act to be a law which cannot be repealed or altered by the local legislature without previous sanction ; or (i) altering or repealing any provision of an Act of the Indian Legislature made after the commencement of the Government of India Act, 1919 which by the provisions of such first mentioned Act may not

be repealed or altered by the local legislature without previous sanction'

The Governor had the right to veto a bill passed by the Legislative Council. Where the Governor gave his assent, it had to be followed by the assent of the Governor-General, and until that assent was given, it did not become an Act. The Governor-General could withhold his assent, but he had to give his reasons in writing for his veto. There was, further, the direct veto of the Crown. In case of a Bill passed by the Legislative Council, the Governor might return it to the Council for reconsideration. The Governor had the power to make law in certain cases by exercising his certifying authority. If the provincial legislature refused to pass proposals relating to a Reserved Subject, the Governor might certify that the passage of the Bill was "essential for the discharge of his responsibility for the subject." By exercising this power he might put the Bill in the same position as though it had been actually passed by the legislature. "But the Governor can not, unless he considers that a state of emergency exists, turn the Bill which he has certified into an Act by himself assenting to it; it must be reserved for the signification of His Majesty's pleasure to be expressed by the King in Council and must have been laid before both Houses of Parliament for eight days of their session before being presented for His Majesty's assent."

The Legislative Council exercised direct control over the Ministers, who administered the Transferred Subjects. The Ministers' salary was voted by that body and so were all sums of money that were necessary for their departments. But the existence of the Government bloc in the Legislative Council, obscured the sense of responsibility of Ministers to the Legislature. The Ministers seldom possessed an assured majority of their own, without depending on the Government bloc. The Simon Commission made the following observations: "The intention of Dyarchy was to establish, within a certain definite range, responsibility to all elected legislature." If this intention is not carried out, the justification for the constitutional bifurcation and for all the complications which it brings in its train is difficult to find. In the light of experience, it may be doubted whether the object aimed at could be attained as long as both halves of Government have to present themselves before the same legislature." Then again, "the resulting almost irresistible impulse towards a unification of Government has probably been all to the good from the point of view of the efficient conduct of business, but the underlying and fundamental conception of the Dyarchic system—complete "responsibility" of Ministers in a certain defined field, and in that field, only—has become almost hopelessly obscured."

The Legislative Council exercised indirect control over the administration by (a) moving resolutions, (b) asking questions and supplementary questions; (c) moving adjournments of the House when the House is in session on an important matter of recent occurrence, (d) moving votes of censure in order to express disapproval of the policy of Government. The Legislative Council had the power to discuss the estimated annual expenditure and revenue of the Province, and to vote on the demands for grants. It had the power of assenting to or refusing assent to a demand or reducing the amount thereof. But there were certain limitations on this power: (1) In the case of a demand relating to a Reserved Subject, the Governor had the power of overruling the decision of the Council if he certified that the expenditure provided for in the demand was essential to the discharge of his responsibility for the subject. (2) If the Legislative Council rejected a demand for a grant for a Transferred Subject, the money could not lawfully be paid unless it was a case of emergency. In cases of emergency, however, the Governor had the power of authorising such expenditure as might, in his opinion, be necessary for the safety or tranquillity of the province, or for the carrying out of any department. This power had never been exercised by any of the provincial Governors. (3) The Council could not vote on or even discuss the following subjects: (a) Provincial contributions to the Central Government, (b) interest and sinking fund charges on loans, (c) expenditure of which the amount is prescribed by or under any law, (d) salaries and pensions of persons appointed by or with the approval of His Majesty, or by the Secretary of State in Council, and (e) salaries of the Judges of the High Court of the Province and of the Advocate-General.

Powers of  
Legislative  
Council

## XI. Defects of Dyarchy

It is admitted on all hands that Dyarchy proved an utter failure. If we look into the causes of this failure we shall find some inherent defects in the dyarchical form of Government. The fundamental defect of such a form is that it divides Government into watertight compartments. The Government of a country is an organic whole. Its different departments and organs must work together harmoniously, and one department is sure to influence the other. But in Dyarchy, subjects which are vitally related to one another were divided into Reserved and Transferred Subjects. Sir K. V. Reddy as a Minister of the Madras Government said that he was Minister of Agriculture but how could one effect improvement in agriculture without Irrigation, which being a Reserved Subject, was not amenable to his control. The Minister had no control over the operations under the Agricultural

Illogical  
division of  
subjects

Loans Act. He was responsible for industrial development, but he had no control over factories, electricity, boilers, gas or welfare of labour. Such a division of governmental functions is, to say the least, ridiculous.

Secondly, the Ministers were in charge of the nation-building departments. But they had to depend on the favour of the

**Lack of funds** Finance Member for the necessary funds. The member in charge of finance was an Executive Councillor, who would naturally look more to the interests of the Reserved Subjects than to those of the Transferred Subjects. The late Sir Muhammad Fakhruddin, the Minister of Bihar and Orissa remarked rather pathetically that he might prepare excellent schemes for the development of education, but the Finance Member might not grant him any funds for realising his scheme.

Thirdly, the position of Ministers was such that they could not evoke much respect from the people. The Governor frequently set aside the suggestion of the individual

**Inferior position of Ministers** Ministers. The Ministers were not consulted jointly. Moreover, their position was very much inferior to that of the Executive Councillor. Even the junior-most Executive Councillor had rank and precedence over the senior-most Minister. A Minister might serve the Government for a dozen of years continuously, as had been the case in Bihar and Orissa, yet he was never selected as Vice-President of the Governor's Council, nor as the Leader of the House.

The Minister could be thwarted in his objects by the Departmental Secretary who was his official subordinate. The Secretary had the right of direct access to the Governor. The Secretary might put forward arguments before the Governor in such a way that the Minister's case might possibly appear in a very unfavourable light. Then again, the Minister had no control over the members of the All-India Services, though they were serving directly under him.

The Council and the electorates formed the habit of looking upon the Ministers as the "Government's men." There was some

**Lack of popular confidence** reason for such an attitude on their part. The Ministers usually got the support of the nominated members, who formed the official bloc. So they did not depend on the votes of the elected members in the same degree as they should depend. Above all, as Dr. Sachchidananda Sinha pointed out before the Reforms Enquiry Committee, Dyarchy failed to evoke that faith which is the foundation of Government. Prof. Lowell has pointed out that "the foundation of Government is faith, not reason."

## XII. Results of the Mont-Ford Constitution

The Constitution of 1919 was avowedly transitional in character. Its object was to provide training to Indians in a western system of government. It must be admitted that the Constitution succeeded in imparting sound <sup>Training of Indians</sup> training in the art of government to many people directly and indirectly. During the period of a little over 16 years (1921-37) as many as 93 Ministers, and 121 Executive Councillors held office in different parts of India. Nearly half of the Executive Councillors, all the Ministers and a few Governors like Lord Sinha, the Nawab of Chateri, Sir K. V. Reddi, Mr. Tambe and Mr. Raghavendra Rao were Indians. Many persons were, thus, brought in touch with the problems of administration and with the difficulties of a responsible form of government. The Constitution taught the art of commending ministerial policy to private members.

The Constitution enlarged the electorate, gave substantial elected majorities in the Provincial Legislatures, put elected members of the legislature in as Ministers in charge of an important range of subjects "transferred" to them. <sup>Popular interest was evoked</sup> The proceedings of Legislative Councils attracted popular interest as those of their predecessors had never done. The Councils not only educated the electorate in democratic habits but also changed the angle of vision of the officials, who pondered over the probable reaction on the mind of the people before taking any new step

The Councils passed a great volume of social and economic legislation with regard to the Constitution and functions of local bodies, notably the Calcutta Corporation, Co-operative Societies, rural indebtedness, land-tenure, prices, etc. <sup>Social legislation</sup> Thus they brought about a concentration of public interest on certain beneficial activities of Government, especially, the nation-building Departments.

But their sense of powerlessness over the Reserved Subjects led to a sense of irritation and despair. The Ministers had to carry out some unpopular measures of the Reserved Departments, notably law and order and finance, and this tended to weaken their connection with legis- <sup>Sense of powerlessness</sup> lature and make for too great a reliance on official votes. The control of the Councils over the Transferred Subjects was not as full as was desired by Indians. For this the critics blamed the influence of the Executive Councillors, the presence of the official bloc in the legislatures and the failure in some Provinces at least to encourage joint deliberation of the Executive Councillors and Ministers.



Dyarchy was most successful in Madras because in that province the difference between Transferred and Reserved Subjects was deliberately blurred. The Justice Party in Madras was pledged to work out the Constitution and was successful in retaining power for the greater part of the sixteen years. In other provinces, notably Bengal and the Central Provinces, Dyarchy had to contend with the manœuvres of the Congress Party, which was determined to make the Constitution unworkable. Dyarchy had many inherent defects in it and its path was made difficult by the constitutional agitation that raged throughout its existence. It had a smooth time only when the Congress Party boycotted the legislatures. In this sense the working of the Dyarchy was attended with a sense of unreality of the Constitution.

Success of  
Dyarchy in  
different  
Provinces

## CHAPTER XXXVII

### THE NEW CONSTITUTION OF INDIA AND PROVINCIAL AUTONOMY

#### I. History of the making of the Constitution of 1935

The Constitution of 1935 has no parallel in the world. Apart from many of its unique features, it has established a record in the length of time which was devoted to its framing and drafting. The Indian Constitution of 1935 may be called the most deliberate piece of written constitution. The Constitution of 1919 envisaged the appointment of a Statutory Commission at the end of ten years after its enactment. But the pressure of political agitation, especially the demand of the Indian National Congress for independence in 1927 accelerated the despatch to India of the Statutory Commission, presided over by Sir John Simon in 1927. The Simon Commission was boycotted by the nationalists on the ground that not a single Indian was included in it. Amidst great difficulties the Commission issued its Report in 1930 ; but Indian public opinion condemned its recommendations as of a reactionary character.

With a view to explore the question of ultimate federation of the British Indian Provinces with the Indian States and to conciliate Indian opinion, a Round Table Conference was summoned in London in November, 1930. In March, 1930, the Civil Disobedience Movement had been started by the Indian National Congress, which naturally refused to take any part in the first Round Table Conference. The Government selected safe men, belonging to other parties, communities and interests to represent India as delegates in the Conference. At the end of the first Round Table Conference, Mr. Ramsay MacDonald, the then Prime Minister of England, made the following important statement : "The view of His Majesty's Government is that responsibility for the Government of India should be placed upon Legislatures, Central and Provincial, with such provisions as may be necessary to guarantee, during a period of transition, the observance of certain obligations and to meet other special circumstances, and also with such guarantees as are required by minorities to protect their political liberties and rights. In such statutory safeguards as may be made for meeting the needs of the transitional period, it will be a primary concern of His Majesty's Government to see that the reserved powers are so framed and exercised as not to prejudice the advance of India through the new Constitution to full responsibility for her own government.

Statement  
of Ramsay  
MacDonald

Pledge after pledge had been given to India that British Raj was there not for perpetual domination. Why did we put facilities for education at your disposal? Why did we put in your hands text-books from which we draw political inspiration? If we meant that the people of India should for ever be silent and negative, subordinated to our rule, why have our Queens and our Kings given you pledges? Why has our Parliament given you pledges? Finally, I hope, and I trust, and I pray, that by our labours together India will come to possess the only thing which she now lacks, to give her the status of a Dominion amongst the British Commonwealth of Nations—what she now lacks for that—the responsibilities and the cares, the burdens, and the difficulties, but the pride and the honour of Responsible Self-Government."

The Round Table Conference held three sessions during the years 1930 and 1932. Mahatma Gandhi attended the second

The second  
and third  
Round Table  
Conferences

Round Table Conference, but no definite conclusion could be arrived at in it. The third Round Table Conference considered the reports of the various sub-Committees which had been appointed before and formulated its own recommendations to the National Government. The British Government presented its proposals in the form of a White Paper in 1933. These proposals were examined fully by a Joint Committee of the two houses of Parliament, who were also aided by assessors from India. Their report was issued in 1934 and on its basis the Government of India Bill was drafted and enacted in 1935

## II. Lines of Advance on the Constitution of 1919

The Government of India Act, 1935, envisages a Federation within which both the Autonomous Provinces and the participating States will be brought within the ambit of a single Central

Federation

Government. "Indian opinion is moving with ever-increasing momentum towards the early fulfilment of this majestic conception" observes Lord Linlithgow, "and there is evident a widespread understanding of the urgent need for the establishment of a nation-wide system of government to which, while preserving their distinctive characteristics the Provinces of British India and Indian States may adhere. Indeed, there exists throughout the sub-continent an ever-growing appreciation of the truth that under no other form of constitutional structure can India with her mosaic of numberless diversities attain to that development, political, economic, to which her circumstances and her history entitle her to aspire." The Federation will bring by agreement a territorial extension of jurisdiction now developed upon the centre. But the Central Government has suffered also from a curtailment

of territorial jurisdiction in as much as Burma and Aden has gone out of its ambit.

According to the Federal plan the Central Government is relieved of the functions of the Crown in its relations with Indian States. These functions, which correspond to the present activities of the political side of the existing Foreign and Political Department, have devolved from the Crown upon a new authority known as "His Majesty's Representative for the exercise of the functions of the Crown in its relations with Indian States" The office is in practice held by the Governor-General, but it is a distinct office outside the Government of India.

So long the Central Executive was not amenable to the effective control of Indian Legislature. The Act of 1935 makes a beginning of responsible government at the Federal centre. Normally the Governor-General in his discharge of functions will act on the advice of his Council of Ministers, not exceeding ten, whom he appoints to hold office at pleasure. The Ministers will be members of the Federal Legislature and responsible to it. But in matters of defence, of ecclesiastical affairs, of external relations, other than relations with other parts of the King's Dominions, and in respect of tribal areas the Governor-General is to act in his discretion, having the power to appoint Counsellors (not Councillors, because there will be no Council here) to aid him. These Counsellors will be not more than three in number and they will not be responsible to the legislature. The Governor-General may also appoint a Financial Adviser whose function will be to advise him in the discharge of his 'special responsibilities' for safeguarding the financial stability and credit of the Federal Government, and an Advocate-General to advise the Federal Government in legal matters.

Under the Mont-Ford Reforms both the Central and Provincial Legislatures possessed plenary legislative jurisdictions. The Central Legislature could legislate for all persons, places and things in British India, though the subject might be classified as a Provincial subject. The Provincial legislatures, again, could similarly legislate for its own territory on any subject even though it was classified as a Central subject. Legislation by any legislature, Central or Provincial, when completed by the grant of assent, was valid even though it affected a Provincial subject or a Central subject. Under the new Constitution each legislature, whether Central or Provincial, will possess jurisdiction only over enumerated subjects

The distinction between the "Reserved" and "Transferred" Subjects in the Provinces has been abolished by the new Constitution. All subjects, including law and order, are transferred

Abolition of  
Dyarchy in  
the Centre

to the control of Ministers, who are responsible to the popularly elected legislature. The unicameral

Legislatures are replaced by greatly enlarged Legislatures, bicameral in Bengal, Bihar, Assam, U. P., Bombay and Madras and unicameral in five other provinces. The nominated  *bloc* disappears entirely from the lower chambers. With certain exceptions administration is conducted with

Position  
of the  
Governor

supply granted by the Legislature, and it therefore accords with advice tendered to the Governor by

Ministers. The Governor himself administers a few areas known as Excluded Areas, mainly inhabited by aboriginal populations unsuited to the regime of representative or responsible government. For certain specific purposes the Governor is able to disregard the advice of Ministers. Apart from special areas and special purposes the government of the Provinces under normal circumstances is technically known as responsible government.

The historic India Council or the Council of the Secretary of State has been abolished. The Secretary of State

Abolition of  
the India  
Council

is now advised by a body of Advisers who are paid by the British Parliament. The Secretary

of State's powers of superintendence, direction and control are not mentioned in the Government of India Act. But,

Secretary of  
State

in practice, the Secretary of State will continue to exercise great influence on Indian affairs. The scope

of his interference will be great in as much as the Governor-General shall have to be under the general control and particular direction of the Secretary of State, whenever he will be required to act "in his discretion or to exercise his individual judgment." Under the new Constitution a Federal Court has been established and a Federal Railway Authority will be constituted.

### III. Characteristics of the Indian Constitution

The Indian Constitution of 1935 exhibits some of the normal characteristics of a federal constitution. The Constitution is a

Federal  
Constitution

written one and it is rigid so far as the federal Legislature is concerned. Neither does the Federation possess general constituent power, nor can the

Provinces mould their own constitution in detail, within the federal framework. The general provisions of the Act can be amended or repealed only by the British Parliament. The Crown in Council may make some minor amendments after taking recourse to an elaborate procedure.

Like many other Federal Constitutions, an elaborate distinction has been made here between federal and local powers. But the Indian Federation differs from all other Federations in the fact that the Governor-General has power <sup>The residuary power</sup> (Section 104) of assigning to Federation or units at his discretion heads of legislation or finance not allocated by the Act. The residuary power, thus, is given neither to the Federation nor to the units. As the Governor-General is a Federal officer the likelihood is that the Federation will have much of the residuary power.

Like other Federations India has now a Federal Court, whose duty is to secure due observance of the limits placed on the centre and the local governments and legislatures. But whereas in other Federations the decisions of <sup>Federal Court</sup> the Federal or Supreme Court is for all practical purposes final, in India the final interpretation of the Constitution will rest always with the Privy Council. No Act of Indian Legislature can shut out appeals from High Courts and the Federal Court to the Privy Council.

The Indian Legislature still remains a non-sovereign body. Section 110 of the Act reasserts the supremacy of Parliament over British India as well as its power to legislate <sup>Indian Legislature, a non-sovereign body</sup> for British India or any part of it. The Constitution expressly states that no legislature, provincial or federal, may make any law affecting the sovereign or the royal family, or the succession to the Crown, or the sovereignty, dominion, or suzerainty of the Crown in any part of India, or the law of British nationality, or the Army Act, the Air Force Act, or the Naval Discipline Act. All these matters are issues connected with sovereignty. The very fact that Indian Legislature cannot change any of them shows that it is a subordinate legislature.

The Indian Government is neither Parliamentary nor of the Presidential type. The Executive is not fully responsible to Legislature as is the case in England and France; nor is the head of the Executive elected by the <sup>Peculiar position of the local Central Executive</sup> people and wholly independent of the legislature as is the practice in the U. S. A. The Governor-General is appointed by the King's Ministers in the United Kingdom, and not, as in the Dominions, on the advice of the local Ministers. Important departments like Defence, External Affairs and Ecclesiastical Affairs are outside the general control of the Federal Legislature. Even in the Provinces where Provincial Autonomy is said to have been established the Governor will exercise powers which are not compatible with any degree of responsible or Parliamentary Government. The Indian

Constitution forms a class by itself by virtue of the elaborate provisions made in it for representation of diverse interests and communities in the legislature. In Canada there is a French minority, and in South Africa a Dutch minority; but separate communal electorates have not been thought of in these Dominions. Post-war states like Turkey, Bulgaria, Greece, Yugo-Slavia, Albania, Hungary, Czechoslovakia, Roumania, Poland, Esthonia, Lithuania and Latvia have each their minority problems; but separate electorates for the different communities are nowhere established. It is curious to note that only in the Mandated countries or in the countries under foreign domination such as Iraq, Syria, Palestine, Cyprus, Kenya and Fiji separate communal electorates have been attempted. Communal electorates operate as a disruptive factor in a state. "With the safeguarding of minorities," observes Keith, "the essence of responsible government is seriously, if not fully, compromised."

Position of minorities

#### IV. Provincial Autonomy

The Government of India Act has carried a step forward that process of giving autonomy or self-government to the Provinces which was suggested by Lord Hardinge's Coronation Durbar Despatch to the Secretary of State in 1911, and implemented to a limited extent in the Mont-Ford Constitution. There is, however, considerable difference of opinion regarding the exact meaning of the term Provincial Autonomy. The Indian public understands by it a system of government wherein the Provincial Government has freedom to perform the functions given to it by the Act without any dictation or interference from above. Mr. Ramsay MacDonald explained its connotation in his concluding speech at the second session of the Round Table Conference on December, 1931 in the following words: "We are all agreed that the Governors' provinces of the future are to be responsibly governed units, enjoying the greatest possible measure of freedom from outside interference and dictation in carrying out their own policies in their own sphere." The Joint Select Committee, however, lays stress on freedom from outside control, rather than on the responsibility of the Executive to the Legislature. According to the Committee, Provincial Autonomy is a scheme "whereby each of the Governors' provinces will possess an Executive and a Legislature having precisely defined sphere broadly free from control by the Central Government and Legislature. This we conceive to be the essence of Provincial Autonomy, though no doubt there is room for wide differences of opinion with regard to the manner in which that exclusive authority is to be exercised." The committee further states that "the Central Government and

Meaning of Provincial Autonomy

Legislature would, generally speaking, cease to possess in the Governors' Provinces any legal power or authority with respect to any matter falling within the exclusive Provincial sphere, though, as we shall explain later, the Governor-General in virtue of the power of supervising the Governors will have authority to secure compliance in certain respects with directions which he may find it necessary to give."

The Government of India Act of 1935 specifies the powers which are allocated exclusively to the Federal Government and to the Provincial Governments. It also enumerates thirty-six subjects over which both the Federal and the Provincial Governments may legislate. In the United States and Australia the powers given to the Federal Government are enumerated and the States or Provinces exercise the residuary powers, while in Canada the residuary powers are left to the Central Government. In India the residuary power is vested in the Governor-General, who in his discretion, may by notification empower either the Federal or the Provincial Legislature to enact law on any subject not enumerated in the three lists mentioned above. The Federal List, consisting of 59 subjects, comprises matters of common national concern, applicable more or less to all parts of India. Matters which are primarily of provincial concern are allocated to Provinces.

Scheme of  
division of  
powers

The Provinces have exclusive authority over the following subjects: the jurisdiction and powers of courts; prisons; reformatories; their public debt and public services; public works; libraries; elections; local government; public health and sanitation; pilgrimages within India; burials; education; water and water rights; agriculture; land; forests; mines; fisheries—protection of wild birds and animals; gas and gas works; trade and commerce within the province,—including money-lending; inns and inn-keepers; production, supply, and distribution of commodities, and development of industries; adulteration of foodstuffs, intoxicating liquors; unemployment and poor relief; incorporation of companies not under federal power; theatres; betting and gambling; charities and charitable institutions; offences against laws dealing with any of these matters, and statistics in relation thereto.

Provincial  
subjects

Besides these subjects there are twenty-five subjects, which are primarily of a federal character and eleven subjects primarily of provincial character over both of which the Federal as well as the Provincial governments have authority. These subjects are essentially of Provincial interests, but they require uniform treatment and co-ordination throughout India. These include Criminal law,

Concurrent  
legislative  
list



Criminal Procedure, removal of prisoners and accused persons from one unit to another unit, Civil Procedure, Evidence and oaths, marriage and divorce, wills and succession, transfer of property other than agricultural land, trusts and trustees, contracts, arbitration, newspapers, books and printing presses, poisons and dangerous drugs, factories, welfare of labour, Trade Unions, industrial and labour disputes, electricity, sanctioning of cinematograph films for exhibition, prevention of the extension from one unit to another of infectious or contagious diseases or pests affecting men, animals or plants. It is admitted by all that the position of the Provinces has improved on account of the distribution of legislative power between the units and the Federation; but the introduction of concurrent subjects has mutilated Provincial Autonomy to a great extent.

The Provinces have also power to deal with land revenue; excise duties excluded from the federal list; taxes on income from agricultural land, on lands and buildings, hearths and windows; duties in respect of succession to agricultural land; taxes on mineral rights; capitation taxes; taxes on professions, trades, callings; on animals and boats; on the sale of commodities, on turnover, and on advertisements; cesses on the entry of goods into a local area; taxes on luxuries, including entertainments, betting and gambling; and stamp duties outside the federal sphere.

Though the list of Provincial subjects appears to be a formidable one, yet the Provinces are not able to exercise unfettered power over these. The Governor has special responsibilities for the preservation of law and order, the rights of minorities, and the legitimate interests of the public services. The Governor-General has power to take action (including legislation) if he thinks that the Governor is not properly discharging his duties in these subjects. The Governor is vested with special power by Sections 56—58 in respect of police rules and regulations, crimes of violence and disclosure of the sources of information about them. The recruitment to the I. C. S. and I. P. S. is vested in the Secretary of State.

It has been contended by many Indian publicists that Provincial Autonomy "is an autonomy more for the Governors of the Provinces, than for the provincial legislatures or ministers." Though in view of large powers vested in the Governor, there is some truth in the contention, yet it must be pointed out that the Governor himself is answerable for the discharge of all his special responsibilities, special powers, and discretionary power to

Sources of  
income of  
Provinces

Limitations  
on Provin-  
cial  
Autonomy

Interference  
from above

the Governor-General and through him to the Secretary of State. Marquess of Zetland, the late Secretary of State for India, stated in the House of Lords on June 8, 1937 "The Parliament of this country reserved itself a potential measure of control in a certain limited and clearly defined sphere—the special responsibilities of the Governors. Since the Governors when acting in respect of special responsibilities, were responsible both for acts of commission and omission to the Parliament of this country, he would naturally be prepared to answer any question bearing upon the discharge by the Governors of their duties within that sphere." The statement unmistakably points out the limitations of Provincial Autonomy conceded by the Act of 1935.

### V. Further Restrictions of Provincial Autonomy during the War

Section 102 of the Government of India Act, 1935, provides that in case the Governor-General declares by Proclamation that a grave emergency exists whereby the security of India is threatened, whether by war or internal disturbance, the Federal Legislature shall have power to make laws for a Province or any part thereof with respect to any of the matters enumerated in the Provincial Legislative List. This section, however, leaves unchanged the executive relations between the Central and Provincial Governments. An amendment to the Government of India Act was, therefore, thought necessary by the British authorities to secure for the Centre essential powers of direction and control during an emergency. Col. Muirhead explained before the House of Commons that in war-time the Centre could legislate on Provincial subjects, but it could not acquire executive authority necessary for dealing with certain essential matters, for example, it could not issue directions to Provincial Governments as regards war policy in relation to subjects on the Provincial List, nor legislate to give itself the necessary power.

The Government of India Amendment Bill, passed on the 2nd September, 1939, makes the Central Government legally competent to issue instructions to Provinces regarding the exercise of their own authority. It also enables the Central Government dealing with Provincial subjects to confer powers on officials of the Central Government to take action. The Amendment, which is counted as Section 126A to the Government of India Act reads as follows :

Government  
of India  
Amendment  
Act,  
September,  
1939

"Where a proclamation of emergency is in operation whereby the Governor-General has decided that the security of India is threatened by war—(a) the executive authority of the

Federation shall extend to the giving of directions to a Province as to the matter in which the executive authority thereof is to be exercised, and any directions so given shall, for the purposes of the last preceding section, be deemed to be directions given thereunder; (b) any power of the Federal Legislature to make laws for a Province with respect to any matter shall include power to make laws as respects a Province conferring powers and imposing duties or authorising the conferring of powers and the imposition of duties upon the Federation or officers and authorities of the Federation as respects that matter, notwithstanding that it is one with respect to which the provincial legislature also has power to make laws.”\*

## VI. The Provincial Executive

The Executive authority of a Province is vested by the Act in a Governor. There are three distinct kinds of executive action of a Governor. Firstly, the Governor acting on the advice of his Ministers; secondly, the Governor acting on his individual judgment, in which he may have consulted the Ministers but if he does not agree with their views, he can act, on his own opinion, in opposition to the opinion of his Ministers; and thirdly, the Governor acting in his discretion, in which the Ministers have no right of entry or of consultation. The line of division between these three domains is not a rigid one. “Let it not be supposed,” stated the Marquess of Zetland, “that the field of Government is to be divided into two parts, in which the Governor and the Ministry operate separately at the risk of clashes between them. The essence of the new Constitution is that the initiative and the responsibility for the *whole* of the government of a Province, though in form vesting in the Governor, passes to the Ministry as soon as it takes office.” The implication of this statement by the Secretary of State for India is that the initiative for any Governmental action lies not with the Governor but with the Ministry and that the Ministers are responsible for the entire range of Governmental activity.

The statement quoted above was made by the Secretary of State with a view to put an end to the first constitutional crisis which took place immediately after the inauguration of the new Constitution in April, 1937. The Congress captured

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The Amendment Act also provides that with the exception of the Aligarh and Benares Universities, legislation with regard to all other Government-established Universities in British India shall be under the jurisdiction of the Government of the Provinces where they are situated. Thus, the Calcutta University comes under the jurisdiction of the Bengal Government and the Patna University under the jurisdiction of the Bihar Government.

majority of seats in the general election in six out of eleven Provinces. But when the Governor called upon the leader of the Congress Parliamentary Party in each of these seven Provinces, they demanded an assurance of non-interference from the Governor as a condition of acceptance of office. The Governors concerned under instructions from above refused to give such an assurance; consequently, the Congress refused to form the Ministry and the Governors had to take recourse to the formation of *interim* Ministries, which had no chance of securing any majority in the Legislatures. This constitutional *impasse* was solved by the declaration of the Marquess of Zetland. The declaration advanced the cause of responsible government in India by emphasising the transition of power from the Governor to his Ministers.

Rigid line of separation between these domains gave way in the first constitutional crisis

The Governors of Bihar and the United Provinces, however, refused to release the political prisoners, though their Ministers advised them to do so. So the Ministers in these two Provinces tendered their resignation on the 15th February, 1938. Mr. Srikrishna Singh, the Prime Minister of Bihar, issued the following statement: "Since my assumption of office, the question of release of the political prisoners has been engaging my earnest and constant attention. I have discussed this matter several times with the Governor but finding that interminable discussions were leading nowhere, I at last decided to order their release and passed orders accordingly. The Governor under the instructions of the Governor-General under Section 126 (5) of the Government of India Act has expressed his inability to agree to issue the order passed by me directing the release of political prisoners. In the circumstances, I have no choice but to resign." Happily within one week of the resignation a compromise was arrived at. The Governors of the two Provinces discussed each case of political prisoner on its merit with their respective Ministers. In both the crises the 'safeguards' in the Constitution gave way to self-rule.

The second crisis

The Governor is appointed by His Majesty by a Commission

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The declaration of break-down of the Constitution in the Congress Provinces in November, 1939, however, shows that the democratic principles of government obtaining in England do not prevail in India. Well-established Convention of the English Constitution demands that when one political party resigns office, the head of the State asks the other parties to carry on the government and if they too refuse to shoulder the responsibility, then a general election is held. In Bihar, Mr. Chandreshwar Prasad Narayan Sinha, the leader of the Opposition, being called by His Excellency asked him to dissolve the Legislature. But in no Province has an attempt been made to see whether the electorate supports the Congress policy of resignation.

under the Royal Sign Manual. In the three Presidencies of Madras, Bombay and Bengal the practice has been to appoint Governors from the rank of public men in England, though there have been some deviations from the practice. In the other Provinces senior and brilliant members of the Indian Civil Service are appointed as Governors. But the Ministers object to the appointment to Governorship of any Civilian who has served under them. On this issue the Orissa Ministry threatened to resign in May, 1938. Since then the practice has been to appoint Civilians serving under the Government of India or in any Province other than the one where there is vacancy in Governorship, as the head of the Provincial Government \*

The Governor is provided with a Council of Ministers to 'aid and advise' him in the exercise of the powers conferred on him by the Constitution, except in relation to subjects left to the Governor's discretion. The Ministers shall have no right even to tender advice on matters pertaining to the Governor's discretion. But in other matters the Governor is to be generally guided by the advice of his Ministers. The Governor selects Ministers, but a Minister must be or become within six months a member of the Legislature.

The Minister need not necessarily be elected; the Governor may nominate a Minister, who is not a member of the Legislature, to the Legislative Council, provided there is a vacancy in that body. Such a procedure was taken recourse to in Bihar in

**Discretionary powers of the Governor**  
**Appointment of Ministers**

April, 1937. In selecting ministers the Governor is required by the Instrument of Instructions to use his 'best endeavours' to select in the following manner: "In consultation with the person who in his judgment is likely to command a stable majority in the Legislature to appoint those persons including, so far as practicable, members of important minority communities who will best be in a position collectively to command the confidence of the Legislature." But according to Section 53 the Instrument of Instructions has no legal binding upon the Governor. Hence, if he appoints persons who have no chance of commanding a majority in the legislature, his action cannot be called illegal or unconstitutional. The appointment of 'Interim Ministries' in six Provinces

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The Governors draw the annual salary in rupees mentioned against the name of the Province and the allowances for renewal of furniture, sumptuary allowance, touring expenses, allowance for Military Secretary and his Establishment etc. etc. mentioned within bracket. Madras 1,20,000 (5,75,500), Bombay 1,20,000 (5,88,400), Bengal 1,20,000 (6,07,300), C. P. 1,20,000 (2,97,000), Punjab 1,00,000 (1,41,200), Bihar 1,00,000 (1,08,000), C. P. 72,000 (1,07,300), Assam 66,000 (1,42,100), N. W. F. P. 66,000 (1,12,850), Sind 66,000 (1,29,800), Orissa 66,000 (1,03,000)

in April, 1937 might have been inexpedient, but not illegal. The Governor may also appoint at his discretion an official as a temporary member of the Legislature to act as his mouthpiece in that body. <sup>'Interim' Ministries</sup>

The Governor is empowered to make rules of business after consultation with Ministers. His instructions require him to secure due consultation of the Finance Minister on all financial matters. He is required to encourage joint responsibility and to avoid any action which permits Ministers to evade their own responsibilities by placing the onus on him.

The Ministers may resign or may be dismissed by the Governor. The Congress demanded that, if there was a serious difference of opinion between the Ministers and the Governors where the Governors' responsibility was concerned, the Governors should dismiss, or call for the resignation of the Ministers. Lord Zetland said that "he did not think it would really be wise, or in accordance with the intention of Parliament, to lay down in those circumstances that the Governor must necessarily call for the resignation of the Ministers". "After all, the relations of a Governor with his Ministers," observed Sir Maurice Hallet, are not those of a master and his servants; rather they are partners in a common enterprise—the good government of the Province.

Governor's  
relation  
with  
Ministers

## VII. Powers and Functions of the Governor

The Governor is the pivot round which the whole of provincial administration rotates. In normal and ordinary circumstances, the Governor accepts the advice of Ministers. But the Governor may not accept the advice tendered to him by his Ministers and exercise his 'individual judgment'. This term is used with reference to matters within the purview of the Ministers, that is with regard to the power of the Governor to disregard the advice of the Ministers, where they are entitled to give advice. The Governor may exercise his 'individual judgment' (a) whenever any of the 'special responsibilities' is, in his opinion, involved and (b) whenever any of the powers conferred upon him by the Act specifically require him in their exercise to use his individual <sup>His</sup> judgment. The term 'discretion' of the Governor is used in connection with those matters in which the Ministers are not entitled to give any advice at all. These include the administration of Excluded Areas and matters left by law to the Governor's own discretion.

'Individual  
judgment' of  
Governor

The Governor has Special Responsibility in respect of (a)

the prevention of any grave menace to the peace or tranquillity of the Province, or any part thereof; (b) the safeguarding of the legitimate interests of minorities; (c) the securing to the members of the Public Services of any rights provided for them by the Constitution and the safeguarding of their legitimate interests; (d) the prevention of commercial discrimination; (e) the protection of the rights of any Indian State; (f) the administration of areas declared to be Partially Excluded Areas; and (g) securing the execution of orders lawfully issued by the Governor-General. The Governors of the North West Frontier Province and of Sind are respectively declared to have in addition a special responsibility in respect of (h) any matter affecting the Governor's responsibilities as Agent of the Governor-General in the Tribal and the Trans-Border Areas; and (i) the administration of Sukkar Barrage and Canals Scheme. (j) The Governor of Central Provinces and Berar is required to see that a proportion of revenue is spent on Berar. The term 'legitimate interests of Minorities' is extremely vague. There is no clear-cut definition of minorities; any section of the people may form an organisation to promote their particular interests by invoking the Governor's protection. The Sanatanists may claim protection when a desirable piece of social reform is proposed by Ministers, the landholders may claim protection if by any law their economic rights are threatened. But the Joint Select Committee made it plain that "this special responsibility is not intended to enable the Governor to stand in the way of social or economic reform merely because it is resisted by a group of persons who might claim to be regarded as a minority." It must be stated, however, that though at the time of inauguration of the Constitution the nationalists and especially the Hindus of Bengal were vehemently opposed to the Special Responsibilities of the Governor, yet on more than one occasion the Bengali Hindus have invoked the protection of the Governor.

Besides his special Responsibilities, the Governor can exercise his individual judgment in the appointment and dismissal of the Advocate-General, as also in regard to the determination of his remuneration. During the twenty-eight months of Congress Ministry the Governor has played generally the part of the constitutional head of the State. In Bihar the Governor, on the advice of the Ministry, appointed Mr. Baladeva Sahay, a staunch Congressman as Advocate-General. The Governor has also the right of exercising his individual judgment in the appointments and postings to the reserved posts. In this case

Special  
Responsibilities to be  
exercised  
by the  
Governor  
in his  
individual  
judgment

Other cases  
of exercise  
of the  
Governor's  
individual  
judgment

too the head of the Province has been normally guided by the advice of his Ministers.

It is wrongly assumed by many that the Ministers' advice with matters relating to the 'Special Responsibility' of the Governor will be invariably disregarded. But the Joint Select Committee has stated and the Governor of Bihar reiterated that "in no sense does it define a sphere from which the action of Ministers is excluded. <sup>Ministers may be consulted</sup> In our view, it does no more than indicate a sphere of action in which it will be constitutionally proper for the Governor, after receiving ministerial advice, to signify his dissent from it and even to act in opposition to it, if in his own unfettered judgment he is of opinion that the circumstances of the case so require."

The Governor has "Special Powers" over and above his "Special Responsibility" in matters of law and order. If he thinks that the peace or tranquillity of the Province is menaced by persons meditating crimes of violence for the overthrow of the Government, he may declare that any of his functions shall be exercised at his discretion. In exercising powers at his discretion he need not consult his Ministers. He may authorize some official to speak in the Legislature on these issues. He may also in his discretion make rules providing that information in relation to the sources from which information has been obtained regarding such criminal intentions shall not be divulged to any other person (including Ministers) except on his direction. The Governor in his discretion may preside at meetings of the Council of Ministers. The Governor in his discretion can summon or prorogue the Legislature or dissolve the Legislative Assembly. The King of England dissolves the House of Commons on the advice of the Prime Minister, but the Provincial Governor may disregard the advice of his Ministers in the matter of dissolving the Lower Chamber. The Governor, again, decides in his discretion any dispute whether any proposed expenditure falls within a class of expenditure charged on the revenues of the Provinces, which is not subject to the vote of the Provincial Legislature. Discussion of or asking questions on any matter connected with the relations between His Majesty or the Governor-General and any foreign State or Prince is prohibited unless the Governor in his discretion consents to such discussion. If any difference of opinion arises as to whether any matter is or is not such as to which the Governor is, by or under the Act required to exercise his discretion or individual judgment, the decision of the Governor in his direction is final.

The Governor has been endowed with considerable legislative



power. (a) Section 75 gives an absolute veto power to the Governor to be exercised in his discretion. (b) The Governor may reserve a Bill passed by the Legislature for the consideration of the Governor-General. The Instructions require that any Bill shall be reserved if it is repugnant to an Imperial Act, seriously derogates from the position of the High Court, affects the Permanent Settlement or appears to provide for discrimination. (c) He has the power to prevent discussion of any Bill or clause or amendment which is likely to affect his responsibility for peace and tranquillity. All amendment or repeal of the Police Acts require his previous assent. (d) The Governor is empowered at his discretion to present, or cause to be presented, a Bill to the Legislature with a Message that it is essential having regard to any of his Special Responsibilities, that the Bill should become law before a date specified in the Message, and to declare by Message in respect of any Bill already introduced that it should for similar reasons become law before a stated date in a form specified in the Message. If before the date specified the Bill is not passed, or is not passed in the specified form, as the case may be, the Governor will be empowered at his discretion to enact it as a Governor's Act, either with or without any amendments made by the Legislature after receipt of his Message. It may be noted that no act of the Provincial Legislature is complete without the Governor's assent; but no Governor's Act requires the consent of the legislature to be binding.

The Governor can issue two kinds of Ordinances, one at the instance of Ministers, and the other at his discretion. (e) The first, under Section 88 can be issued by the Governor in consultation with his Ministers, when the Legislature is not in session; but it would cease to be operative within a fortnight of its presentation to the Legislature. The Governor is obliged to call a meeting of the Legislature once in twelve months only. Thus, the Ministers and the Governor combined would be able to pass temporary legislation on all subjects which would remain in force as long as the Governor did not call a meeting of the legislature. (f) The Governor may also, in matters involving his discretion or individual judgment issue Ordinance with six months' maximum duration, but capable of being extended for a further period of six months. Unless his previous sanction is given, no Bill or amendment can be introduced or moved in the Provincial Legislature which repeals, amends or is repugnant to any Governor's Act or Ordinance promulgated in his discretion by the Governor; or any Act relating to any Police Force. The Governor in his discretion is empowered to make regulations—general or particular—making

it unnecessary to consult with the Public Service Commission in making certain appointments. "Taken collectively", observes Prof. K. T. Shah, "the effect of all these powers and functions, to be exercised by the Governor in his discretion, is that substantially the most important part of the executive work is removed from the sphere of the Governor's constitutional advisers."

(g) Over and above these powers, the Governor is empowered to issue Proclamation. By Proclamation he may suspend the Provincial Constitution and to appropriate all or any of the powers of any provincial body. "Such a Proclamation by a Governor may be revoked or varied by a subsequent proclamation. A Proclamation under this section shall be communicated forthwith to the Secretary of State and shall be laid by him before both Houses of Parliament. Unless it is a Proclamation revoking a previous Proclamation, such a Proclamation by a Governor shall cease to operate at the expiration of six months. But such a Proclamation unless revoked shall continue in force for a further period of 12 months if and so often as a resolution approving the continuance of the Proclamation is passed by both Houses of Parliament. No such Proclamation, however, shall remain in force in any case, for more than three years." Proclamations of such a kind have been issued by the Governors of Madras, Bombay, U. P., C. P., Bihar, Orissa and N. W. F. P. in November, 1939. The effect of such Proclamation has been to restore the purely bureaucratic system of government as it prevailed before the establishment of Provincial Legislatures. Laws made under the Proclamation have a duration of two years and after its expiry is subject to repeal or re-enactment by the appropriate legislature. But no such Proclamation shall in any case remain in force for more than three years.

Section 93  
of the Act :  
Governor's  
power on  
the break-  
down of the  
Constitution

Financial burdens on the Province may conceivably be imposed by Governor's Act or an Ordinance. The Governor authenticates a schedule of grants made, to which he may add grants refused or reduced where his responsibilities are concerned.

Governor's  
power over  
finance

The Governor possesses the power of summoning, proroguing and dissolving the legislature and appointing its place of meeting at his discretion. He is given a special position as regards Excluded or Partially Excluded areas. In Excluded areas the Governor himself directs and controls the administration; in the case of the latter he is declared to have a Special Responsibility. In neither case does any Act of the Provincial Legislature apply to the Area, unless by direction of the Governor given at his discretion.

Governor's  
power over  
Legislature  
and Excluded  
Areas

### VIII. The Position and Powers of Ministers

The legal status of the Provincial Ministers is defined by Section 51 of the Act, which lays down : "(1) The Governor's Ministers shall be chosen and summoned by him, shall be sworn as members of the Council, and shall hold office during his pleasure. (2) A Minister who for any period of six consecutive months is not a member of the Provincial Legislature shall at the expiration of that period cease to be a Minister. (3) The salaries of Ministers shall be such as the Provincial Legislature may from time to time by Act determine, and until the Provincial Legislature so determine, shall be determined by the Governor provided that the salary of a Minister shall not be varied during his term of office. (4) The question whether any, and if so, what advice was tendered by Ministers to the Governor, shall not be enquired into by any court. (5) The functions of the Governor under this Section with respect to the choosing and summoning and the dismissal of Ministers and with respect to the determination of their salaries, shall be exercised by him in his discretion" It has been already pointed out that the Convention has got the better of the Act and the Ministers have become responsible practically for almost every field of administration.

The Act does not limit the number of Ministers in any Province. There is no uniformity regarding the number of Ministers in the different provinces. In Bengal, as many as 12 Ministers were appointed at one time, in Madras there were 10, in Assam 8, in Bombay 7, in the Punjab, Sind and U. P. 6 each, in C. P. 5, in Bihar and the N. W. F. P. 4 each and in Orissa 3 Ministers. The salary drawn by Congress Ministers was rupees five hundred per month. Besides the salary, the Ministers are allowed to draw certain allowances, travelling expenses, halting charges, etc.\* In the Congress Provinces all the Ministers draw the same scale of pay ; but in the non-Congress Provinces the Prime Minister takes the highest salary and difference also exists in the salary drawn by different Ministers. The expenditure on the salary of Ministers in Bengal is the highest in the whole of India. Under the Montford Constitution the Ministers and the Executive Councillors in Bengal used to get rupees fifteen per day as daily allowance while on tour in addition to actual first class tickets for themselves and third class tickets for their servants, the number not exceeding four in the case of the former. But under the present administration, the Ministers get, while on tour,

The total annual expenditure per Minister in Bihar was Rs.14,050 ; in Sind 13,450 ; in Madras 13,450 ; in U. P. 12,383 ; in Bombay 11,186 ; in Assam 11,644 ; in Orissa 10,775 , in C. P. 9,443. Taking into consideration the number of Ministers, the Madras expenses on Ministers stand highest among the Congress Provinces.

rupees twenty-five per day as daily allowance in addition to four first class and ten third class servants' tickets. In contrast to this, it may be pointed out that in the N. W. Frontier Province the Ministers used to take rupees four per day as halting allowance.

When the Government of India Act was passed and the Instrument of Instructions were issued, Indian publicists and politicians thought that the mode of appointment of Ministers, the Special Powers, the Special Responsibilities, and the Discretionary Powers of the Governor will reduce the Ministers to mere figureheads. But the experience of the working of the Provincial Constitution during the last twenty-eight months has shown the baselessness of such apprehensions. The Instrument of Instructions mentions the desirability of having regard to communal claims in the appointment of Ministers. It was apprehended that the representation of different communities in the Ministry would destroy its homogeneity and stand in the way of realisation of collective responsibility. But it was forgotten that the Governor can not force the Premier to accept his nominee in the Council of Ministers. The Governors have exercised as much influence as Queen Victoria is known to have exercised in the selection of Ministers, leaving the ultimate decision to the Premiers. Actually the leaders of the Majority Party or Coalition Party generally took care to appoint some Ministers from the Minority Communities belonging to their own party.' In one Province the Governor was memorialized to include a representative of a minority community in the Ministry, but he refused to exercise his discretion. There has been only one case of dismissing some Ministers by the Governor, but that power was exercised on the advice of the then Prime Minister of the Province (C. P.)

The Governor in his discretion makes the rules of business and this gave rise to the fear that he might provide for individual consultation between the Ministers and himself. But in practice the Governors have not made any such rule. On the other hand, they have tried to promote collective responsibility of Ministers in every Province, though the Act does not impose collective action and responsibility upon the Ministers.

In Assam the Bardoli Cabinet contained 3 Muslims, 3 Caste Hindus and 2 members of the Scheduled Castes. The Huq Ministry contains 6 Mussalmans, 3 Caste Hindus and 2 Scheduled Caste members. The Bihar Congress Ministry contained 2 Caste Hindus, 1 Mussalman and 1 Harijan. The Bombay Congress Ministry had 5 Hindus, 1 Mussalman and 1 Parsi. The C. P. and Orissa Congress Ministries did not contain any Mussalman. The Madras Congress Ministry was composed of 6 Caste Hindus, 1 Brahmo, 1 Mussalman and 1 Indian Christian. In the North West Frontier there were 3 Mussalmans and 1 Hindu; in Sind 2 Hindus and 4 Mussalmans; in the U. P. 2 Mussalmans and 4 Hindus in the Ministry. In the Punjab there are 3 Mussalmans, 1 Sikh and 2 Hindu Ministers.

Position of  
Ministers in  
theory and  
in practice

Collective  
responsibility

There are, however, two remarkable deviations from the practice of responsible government as it obtains in England. In England, the House of Commons can propose a reduction to the salary of Ministers at the time of budget discussion. Such a proposal offers opportunity for criticism of the Department in charge of a particular Minister. But in the Indian Provinces the Ministers' salaries have to be settled by an Act of the Provincial Legislature, and once settled they cannot be amended during the tenure of office of these Ministers. The Provincial Legislature, however, can pass a vote of no-confidence against a particular Ministers or against the whole Ministry. In theory, the Ministers hold office so long as the Governor pleases to allow them to retain office, but in practice the Ministers remain in office so long as they enjoy the confidence and command the support of the Legislature. Another deviation from the Convention of the English Constitution is that the King never attends Cabinet meetings; whereas the Governor is entitled to preside at Cabinet meetings and to obtain all the information relating to every subject in any department of his Government from his Ministers or from the Secretaries. It is difficult to say to what extent the Governors exercise their power and influence in the Cabinet meetings.

The Ministers in Congress Provinces enjoyed immense popularity and esteem. No Governor, not even a Governor-General has ever received such ovation from the people as the Congress Ministers got in Bihar. I have got no personal knowledge of the power and influence exercised by Ministers in other Provinces. But generally speaking, it may be said that the Ministers in every Congress Province were acclaimed everywhere as their own men by the people. The Ministers have not got the power to introduce the "Spoils System," they cannot reward their supporters with high posts in the I. P. S., I. C. S., etc., the Congress Ministers refused to recommend any man for honorary titles: yet they exercised great influence. "All the opportunity that the Indian politician in power," says Prof. K. T. Shah, "will have to reward his followers, and to maintain their continued support in the Legislature as well as in the country, is to be found in such patronage for employment, which, under the Law and the Rules made for the purpose, is in the power of the Ministers, singly or in Council; and in those trends of policy which might provide the bigger figures in the economic world with larger and more numerous opportunities for exploiting the country." For obvious reasons examples of the exercise of such patronage cannot be discussed at present

Deviations  
from the  
practice of  
responsible  
government

Influence  
and patro-  
nage of  
Ministers

## IX. Position of the Services

Members of the All-India Services, consisting of the Civil Service proper, the Indian Police Service, the Service of Engineers, the Medical Service, the Educational Service, the Agricultural Service and the Veterinary Service, as well as those of Provincial Services, carry out the routine business of administration under the Ministers. The tradition of government in India encouraged the Government servants to look upon themselves as the governing class. In fact, members of the Civil Service had so long occupied the key positions in the Legislature, Executive and the Judiciary and had actually framed the policy of the Government. They were deprived of the power of laying down policy to some extent by the Act of 1919, but as Executive Councillors and Secretaries they wielded considerable influence in the determination of policy. The Act of 1935, however, divested them of all responsibility as regards general policy of administration, which is to be laid down by the Ministers.

Much of the success of the government depends, however, on the loyalty, happiness and contentment of the Services. The Constitution, therefore, guarantees the tenure of office, emoluments and other privileges of the members of the Services. The Joint Select Committee summarise the rights of the officers appointed by the Secretary of State which are protected by law : (a) a right of complaint to the Governor or Governor-General against any order from an official superior affecting his conditions of service ; (b) a right to the concurrence of the Governor or Governor-General to any order of posting or to any order affecting emoluments or pensions, and any order of formal censure ; (c) a right of appeal to the Secretary of State against orders passed by an authority in India of censure or punishment or affecting disadvantageously his conditions of service and terminating his employment before the age of superannuation ; (d) regulation of his conditions of service (including the posts to be held) by the Secretary of State, who will be assisted in his task by a body of Advisers of whom at least one-half will have held office for at least ten years under the Crown in India ; (e) the exemption of all sums payable to him or to his dependents from the vote of either Chamber of the Legislature. It will thus be seen that if the Governor or the Governor-General wishes to exercise his power of protecting the Services, the Ministers are restricted as regards postings, allocation of work, reorganisation of services and functions and other matters which relate to the enforcement of policy and the efficiency of administration.

But no Governor has in the least encouraged the Services to defy the Ministers. The Civil Services have been asked to carry out the policy laid down by Ministers irrespective of their own likes or dislikes. "It is only by rigid avoidance", said Sir John Anderson in August, 1937, "of party connexion that a Civil Servant can give the unquestioning and unquestionable loyalty which every lawful Government is entitled to expect from him in the formulation, and the carrying out of its administrative policy." The Governor has, indeed, upheld the claims of the members of the Services whenever any gross injustice was threatened, such as in the case of proposed reduction in the salary; but cases of such injustice have been rare. On the whole the Ministers of most of the Provinces had excellent relation with the members of the Services. One Chief Secretary in a Congress Province was bold enough to issue a circular to all Departments to ignore the Orders of Ministers which did not purport to emanate from a Secretary. The Chief Secretary came to realise his mistake very soon. Such cases of defying the authority of Ministers have been extremely rare. It must be said to the credit of the Services that they have adopted themselves to their new role, within a very short period and have carried out the policy of the Ministers with singular loyalty, devotion, and even enthusiasm. As an example of devoted enthusiasm of the Public Services we may mention the work of all grades of Educational Service, from the Director of Public Instructions (Mr. H. R. Batheja and then Mr. J. S. Armour) and the Secretary of the Mass Literacy Committee (Prof. Bhupati Bhushan Mukherjee) to the Sub-divisional Inspectors of Schools in connection with the Mass Literacy Campaign in Bihar, inaugurated by Dr. Syed Mahmud, the Education Minister. The experience of actual working of the Constitution has belied all the dark prophecies made by the publicists in India. A critic like Sir Shafa'at Ahmad Khan, whose views are usually sober and moderate, wrote three years ago, that "there can be no genuine Provincial Autonomy without control over the Services, and the anomalous and illogical position which has been a fruitful source of misunderstanding in the past will be perpetuated. It will provide recurring causes of irritation and suspicion between Ministers and Executive heads of their Departments, and will clog the wheels of the administrative machinery." But Mr. C. Rajagopalachariar and Mrs. Vijaya-Lakshmi Pandit have unhesitatingly testified to the loyal co-operation they received from the members of the Services. During the last two years the members of the Services have been quietly pushed to the back-ground by the personality of Ministers in almost all the Provinces.

## X. The Public Service Commission

The Provincial Public Services are recruited by the advice of the Provincial Public Service Commission. The Governor, in his discretion, appoints the Chairman and other members of the Commission. At least one-half of the members of the Commission must have served the Crown in India for at least ten years on the date of their appointment. Recently in an eastern Province inter-provincial jealousy led to an agitation against the appointment of a member to a Provincial Public Service Commission; but the Governor stood firm in his decision. Some Provinces have their own separate Commission, while other Provinces, like Bihar, Orissa and the C. P. and Berar, maintain a Commission jointly.

The duties of the Federal and Provincial Public Service Commissions are laid down in Section 266 of the Act as follows: (1) To conduct examinations for appointments to the service of the Federation and the Provinces respectively. (2) If required by any two or more Provinces so to do, to assist those Provinces in framing and operating schemes of joint recruitment for their forest services, and any other services for which candidates possessing special qualifications are required. (3) The Secretary of State as respects services and posts to which appointments are made by him, the Governor-General in his discretion as respects other services and posts in connection with the affairs of the Federation, and the Governor in his discretion as respects other services and posts in connection with the affairs of a Province, may make regulations specifying the matters, on which either generally or in any particular class of case, or any particular circumstances, it shall not be necessary for a Public Service Commission to be consulted. But, subject to regulations so made, and to the provisions of the next succeeding sub-section, the Federal Commission or, as the case may be, the Provincial Commission *shall be consulted*: (a) on all matters relating to methods of recruitment of Civil Services and for Civil posts: (b) on the principles to be followed in making appointments to Civil Services and posts, in making promotions and transfers from one service to another, and on the suitability of candidates for such appointments, promotions or transfers: (c) on all disciplinary matters, including memorials or petitions relating to such matters; (d) on any claim by or in respect of a person who is serving or has served His Majesty in a civil capacity in India, that any costs incurred by him in defending legal proceedings instituted against him in respect of acts done in the execution of his duty



should be paid out of the revenues of the Federation or, as the case may be, the Province; (e) on any claim for the award of compensation in respect of injuries sustained by a person while serving His Majesty in a civil capacity in India, and any question as to the amount of any such award, and it shall be the duty of a Public Service Commission to advise on any matter so referred to them, and on any other matter which the Governor-General in his discretion or, as the case may be, the Governor in his discretion, may refer to them.

Public Service Commissions have no authority to determine the quota of appointments which should go to any particular community. Such an allocation of quota is regarded as a matter of general policy and as such lies in the hands of Ministers. The Ministers, however, in several Provinces, have stretched the meaning of the term 'community' to the furthest extent. Not only are the Caste Hindus, Scheduled Castes, Mussalmans, Christians, etc., but also the different castes and the Bengalis in Assam and Bihar are treated as separate communities. The Public Service Commission can hold competitive examinations, but where numerous communities are entitled to representation in the Services, it is by no means certain that the most meritorious candidates will be appointed. The recommendations of the Public Service Commissions are not legally binding on the Ministers. Ministers in many Provinces are known to have set aside the recommendations of the Public Service Commissions. In one Province, the Public Service Commission recommended three names in order of merit for appointment to a Lectureship in a Government College. The Education Minister himself came to the College with all the three candidates and asked each of them to teach a particular portion of a text-book. The candidate who was able to make the most favourable impression on the mind of the Minister, the Principal of the College and the head of the Department of the College concerned was appointed. This sets the model to the mode of recruitment to the public services. But few Ministers have the energy, time and the requisite qualification of the particular Minister referred to here. The Public Service Commission is not entitled to be consulted in the matter of appointment, promotion, transfer and discipline of public servants of subordinate ranks.

Limitations  
on the  
power of  
Commis-  
sions

## XI. Provincial Legislatures

The Provincial Legislatures do not represent the people in general. They are composed of representatives of separate communities, interests and sexes. The result of such

a scheme of representation is that some members are representatives of a vast number of people, while others represent only a few. Though the number of Europeans and Anglo-Indians is very small in every Province, yet they are given disproportionately large number of seats. The landlords may offer themselves as representatives in general constituencies, and in their specially reserved constituencies ; over and above these they can protect their vested interests through their special representatives in the Upper Chamber. The framers of the Constitution seem to have been extremely solicitous for protecting the vested interests of the merchants, manufacturers and landlords. Their aim has been fulfilled in those Provinces where there is no large majority of homogeneous population and where the operation of the Communal Award has made it impossible for the true representatives of the people from being elected. The Communal Award (August 4, 1932), which was made by Mr. Ramsay MacDonald as Prime Minister, at the request of Mahatma Gandhi himself, has in every Province assigned a definite number of seats to Mussalmans, Sikhs, and Indian Christians. The Award was modified by the Poona Pact which has secured the representation of the Harijans, officially known as the Scheduled Castes.

Provincial  
Legislatures  
represent  
communities,  
interests and  
sexes, not  
the people  
in general

The Legislature in Bengal, Bihar, Assam, the United Provinces, Madras and Bombay are bi-cameral while in the other five provinces it is unicameral. The objects of creating second Chambers in Provinces were to prevent hasty and ill-considered legislation and to protect the vested interests of the richer classes.

Second  
Chambers  
in six  
Provinces

Sir Tej Bahadur Sapru voiced the opinion of the general masses of the people when he submitted before the Joint Committee that the Provincial Second Chambers will be useless and harmful. He added : "It is perfectly true that whenever there are important zemindars, there is a demand for the establishment of a Second Chamber, but this demand is not endorsed by general public opinion. I personally have grave doubts as to whether Second Chambers by themselves can effectively protect the interests of the zemindars or otherwise conservative classes. I am also more than doubtful as to whether constituted as the zemindar class at present is, it can supply a sufficient number of men who can effectively discharge the functions of the members of an Upper Chamber as in other countries. Nor do I feel so confident as Sir Malcolm Hailey seemed to be that it would be possible to secure the right type of men from among commercial magnates or retired members of the Judiciary. If the Second Chamber's legitimate function is going to be that of a revising body, then I do not expect any such results to follow from them in the Provinces of India. On the other hand, if

they are to function merely as brakes upon hasty and ill-considered legislation passed by the Lower Chambers, one ought not to overlook the danger—by no means imaginary—that the Second Chambers may, and probably will effectively block all social legislation of a progressive character and thus come into conflict with the popular Lower House and general public opinions. There is also the question of a greater strain being placed on the provincial purse by the establishment of a Second Chamber and we ought not to overlook it." The experience of the last twenty-eight months of the working of the Constitution has proved the validity of the doubts entertained by Sir Tej. But the Upper Chambers have failed to block progressive measures on account of the provision regarding joint session of the two Houses in cases of conflict between the two. The Congress has captured majority of seats in all the Provinces, having bi-cameral legislature, excepting Bengal. The following table (page 557) illustrates the strength of the opposition in the case of a joint sitting of the two Houses.

Joint  
Sittings

The Upper Chambers known as Legislative Councils have a perpetual existence, members holding their seats for nine years with periodic triennial retirement. The franchise is based on high property qualifications, or qualification based on service in certain distinguished public offices. The principle of composition of Second Chambers is not the same in all the six Provinces. In Bengal and Bihar, 27 out of the maximum of 65 and 12 out of the maximum of 30 members are elected by the Assemblies by the method of single transferable vote. In the other four Provinces all the members of the Council are directly elected. The Governor has power to nominate a few members to the Councils. The chart given herewith illustrates the composition of the Provincial Second Chambers.

Term and  
principle of  
composition  
of Second  
Chambers

The Lower Chamber, known as the Legislative Assembly has a term of five years as a maximum. Even the Governor cannot extend its life beyond five years. After the general election of 1937 the strength of parties in the different Provincial Assemblies was as follows.

Party  
strength  
in the  
Provincial  
Legislature

In Bengal—Congress 52, Independent 113, Muslim League 39, Hindu Nationalist 3, Hindu Maha Sabha 2, People's party 36, Trippera Krishak Samity 5. In Madras—Congress 159, Independent 15, Muslim League 9, Muslim Progress 1, No Party 9, Justice 21, People's Party 1. In Bombay—Congress 85, Independent 39, Muslim League 18, Democratic Swaraj 3, Ambedkar's Party 13, Non-Brahmin 10, Varnashrama 1, Koti Sabha 1, Labour 4. In the Punjab—Congress 19, Independent 19, Muslim League 1, Unionist 95, Hindu Election Board 11,

Ahrars 2, Ittihad-U-Millat 2, Khalsa National Board 14, Akali 10, Socialist 1, Labour 1. In the U. P.—Congress 136, Independent 43, Muslim League 26, Liberal 1, National Agriculturist 22. In the N. W. F. Province—Congress 19, Independent 3, Hindu Sikh Nationalist 7, No Party 21. In Sind—Congress 7, Hindu 12, Independent 3, No Party 1, Sir Ghulam Hussain's Party 16, United 17, Azad Party 1, European 3. In Bihar—Congress 92, Independent 16, United 6, No Party 32, Depressed 3, Ahrar 3. In the C. P. Assembly—Congress 70, Independent 19, Ambedkar's Party 1, Independent Labour Party 2, Nationalist Raja Party 1, Nationalist 2, Non-Brahmin 3, Hindu Sabha 1, Muslim League 5, Muslim Parliamentary Board 8. In the Assam Assembly—Congress 33, Non-Congress 14, Muslim League 10, Muslim Party 24, Independent 27. In Orissa—Congress 36, Independent 6, Nationalist 4, No Party 4, United 6.

| Province            | Congress Members<br>(numerator) in the<br>Assembly (denomi-<br>nator giving total<br>number of Members).<br>In the case of Bengal the numerator denotes<br>strength of Coalition Party. | Congress Members<br>in the Council  | Strength of the<br>Ministerial Party<br>in a joint sitting  |
|---------------------|---|-------------------------------------|---|
| Madras              | $\frac{162}{215}$   | $\frac{27}{56}$                     | $\frac{189}{271}$ ; majority<br>of 58   |
| Bombay              | $\frac{88}{175}$  | $\frac{13}{30}$                     | $\frac{101}{205}$ ; only 2 votes<br>are needed<br>by the Con-<br>gress Party<br>to secure<br>majority |
| United<br>Provinces | $\frac{147}{228}$   | $\frac{14}{60}$                     | $\frac{161}{288}$ ; majority<br>of 16   |
| Bihar               | $\frac{98}{152}$  | $\frac{10}{30}$                     | $\frac{108}{182}$ ; majority<br>of 16   |
| Assam               | $\frac{32 + 26}{108}$ supporters of<br>Ministry   | $\frac{\text{No Party system}}{22}$ |   |
| Bengal              | $\frac{140}{250}$ Ministerialists   | $\frac{31}{65}$ Ministerialists     | $\frac{171}{315}$ ; majority<br>of 18   |

It is a noticeable feature of the new Constitution that in Bengal, the Punjab, the North-West Frontier and Sind, a small Muhammadan majority over any other single group is assured. In several matters the two Chambers have equal legislative rights. But the Legislative Councils have no voice in the matter of grants and they have no initiative in Financial Bills. If a Bill which has been passed by the Legislative Assembly and transmitted to the Legislative Council, is not presented by the latter to the Governor for the assent within twelve months, the Governor may summon the Chambers to meet in a joint sitting for the purpose of deliberating and voting on the Bill. If the Bill relates to finance or a matter of Special Responsibility the Governor may summon the Chambers to meet in a joint sitting for the purpose aforesaid, notwithstanding that the said period of twelve months has not elapsed, in his discretion. At a joint sitting of the Chambers the President of the Legislative Council presides.

The Speaker is the President of the Legislative Assembly. Efficient working of the Assembly depends largely upon his personality and ability to win confidence of all sections of the House. He is elected by the House from amongst its own members and gets a high salary for his work. "The persons who have been elected Speakers," observes Prof. Gurumukh Nihal Singh, "in Provinces under Congress rule, are not of the type chosen in England for the Speakership. They have taken far too active a part in the Congress movement, several of them having suffered imprisonment in the cause, to become suddenly indifferent to the fate of the Congress or of the movement for national freedom. I doubt if it is possible for persons of this type to develop at this stage in the life of the nation a purely constitutional mentality and to circumscribe their activities within the four walls of the Legislative Chamber." His doubts are justifiable; the Speakers in Congress Provinces have refused to give up their party affiliation, but at the same time it must be said that their conduct has given satisfaction to all the parties in the House. In the non-Congress Provinces the Speakers had at times great difficulty in maintaining the dignity of the House and they have sometimes been accused of partisanship.

Ordinary Bills must be passed by both the Chambers, where there is a Second Chamber. These may originate in either House. A Bill pending in the Legislative Council which has not been passed by the Legislative Assembly shall not lapse on a dissolution of the Assembly. But a Bill pending in the Legislative Assembly or passed by it

but pending in the Council shall lapse on a dissolution of the Assembly. When a Bill has been passed by both the Chambers (or by the Legislative Assembly alone where there is no Second Chamber), it is to be presented to the Governor. The Governor may give his assent to it, veto it, or reserve it for the consideration of the Governor-General.

No proposal for the imposition of taxation or for the appropriation of public revenues, nor any proposal affecting or imposing any charge upon those revenues, can be made without the recommendation of the Governor; that is to say, it can only be made on the responsibility of the Executive. The proposals for the annual appropriation of revenue are grouped in three categories: (1) those which are submitted to the vote of the Legislature; (2) those which are not submitted to the vote of the Legislature though (with one exception) they are open to discussion; (3) proposals, if any, which the Governor may regard as necessary for the fulfilment of any of his Special Responsibilities.

The following are charged on the revenues, and therefore not votable.—(a) The salary and allowance of the Governor and other expenditure relating to his office for which provision is required to be made by Order in Council; (b) Debt charges for which the Province is liable including interest, sinking fund charges and redemption charges, and other expenditure relating to the raising of loans and the service and redemption of debt; (c) The salaries and allowances of Ministers and the Advocate-General; (d) Expenditure in respect of the salaries and allowances of Judges of any High Court; (e) Expenditure for Excluded areas; sums to meet judgments or awards of court and any other sums charged by the Act or any Provincial Act. The Governor's salary is exempted from discussion; but other items may be discussed.

It must be noted that even the rejected items in the demands for grants open to voting can be restored by the Governor, if he thinks that these involve any of his Special Responsibilities. The Provincial Legislature is not the sole authority in legislation. The Governor has power to legislate in many important affairs. The Provincial Legislature has neither constituent powers, nor can it settle questions of franchise, fix constituencies and decide upon the methods of election—all these are settled finally by the British Parliament. Moreover, its powers are not final even in the subjects declared to be exclusively provincial. In some cases bills are reserved for the consideration of the

Money  
Bills

Non-votable  
items

May discuss  
but can  
not vote  
upon

Limitations  
on the  
powers of  
the Provincial  
Legislature

Composition of the Provincial Upper Chamber

|                                    | Bengal   | Bihar | Bombay   | Madras  | U. P. | Assam |
|------------------------------------|--|-------|----------|---|-------|-------|
| Directly elected by General Const. | 10   | 9     | 20       | 35  | 34    | 10    |
| Muhammedan                         | 17   | 4     | 5        | 7   | 17    | 6     |
| European                           | 3  | 1     | 1        | 1   | 1     | 2     |
| Hindu Christians                   | x  | x     | x        | 3   | x     | x     |
| Elected by Assemblies              | 27   | 12    | x        | x   | x     | x     |
| Nominated by Governor              | 6  | 4     | 3 to 4   | 9   | 8     | 4     |
| Total                              | 63   | 30    | 29 to 30 | 55  | 60    | 22    |
|                                    | Two seats which are to be filled by the Governor remained vacant |       |          | One seat is to be filled up by nomination by the Governor |       |       |

**Composition of the Provincial Legislative Assemblies**

| Number of total seats in the Provinces and Dominion for the total population in each category: | Bengal           | Bihar                 | Orissa | Assam   | U. P.                  | C. P.   | Punjab                           | Madras   | Bombay                | Sind                  | N. W. F. P.            |
|--|------------------|-----------------------|--------|---------|------------------------|---------|----------------------------------|--|-----------------------|-----------------------|------------------------|
| General with reserved seats for Scheduled Castes in brackets<br>(808<br>177million)            | 78(30)           | 96(15)                | 44(6)  | 47(7)   | 140(20)                | 84(20)  | 42(8)                            | 140(30)  | 114(15)               | 18                    | 9                      |
| Muslims  | 39<br>117        | 1<br>39               | 0<br>4 | 9<br>34 | 27<br>64               | 0<br>14 | 1<br>84 and<br>Sikhs 31          | 10<br>29   | 20<br>29              | 3<br>38               | 0<br>36 and<br>Sikhs 3 |
| European   | 26               | 2                     | ×      | 1       | 2                      | 1       | 1                                | 3  | 3                     | 2                     | ×                      |
| Anglo-Indian   | 11<br>1 lakh     | 3<br>1                | ×      | ×       | 1                      | 1       | 1                                | 2  | 2                     | ×                     | ×                      |
| Indian Christians  | 20<br>2 lakh     | 1                     | 1      | 1       | 2                      | ×       | 2                                | 8  | 3                     | ×                     | ×                      |
| Commerce, Industry, Mining and Plantation and holders  | 19               | 4                     | 1      | 11      | 3                      | 2       | 1                                | 6  | 7                     | 2                     | ×                      |
| Universities   | 5                | 4                     | 2      | ×       | 6                      | 3       | 5                                | 6  | 2                     | 2                     | 2                      |
| Others   | 2                | 1                     | ×      | ×       | 1                      | 1       | 1                                | 1  | 1                     | ×                     | ×                      |
| Women  | 40<br>10 million | 3 General<br>1 Moslem | 2      | 4       | 3 General<br>2 Moslems | 3       | 1 General<br>2 Moslems<br>1 Sikh | 6 General<br>1 Moslem<br>1 Indian<br>Christian 1 | 5 General<br>1 Moslem | 1 General<br>1 Moslem | ×                      |
| Backward areas and tribes  | ×                | 7                     | 5      | 9       | ×                      | 1       | ×                                | 215  | 175                   | 60                    | ×                      |
| Total  | 249              | 152                   | 60     | 108     | 228                    | 112     | 175                              | 215  | 175                   | 60                    | 50                     |

Sikhs have got 34 seats for males and 1 seat for women in the Punjab and the N. W. F. P. and their total population is 31 lakhs in these two Provinces.



Governor-General and that of His Majesty. The Provincial Legislature cannot be said to have been empowered to exercise full and absolute control over the Ministers. If the Legislature proves refractory the Governor can declare a partial breakdown of the Constitution and continue to rule with the help of Ministers, provided the Ministers are reasonable enough from the point of view of the Governor.

## XII. The Electorate

The electoral system of India is based on the principle of separate representation of "communities, classes and interests". The electorate is divided into general, with reservation for the Scheduled castes, Muhammadan, Sikh, Anglo-Indian, European, Indian Christian; Commerce, Industry, Mining and Planting; Land-holders, Universities, Labour, Women, and Backward areas and tribes according to the special needs of individual provinces. The qualifications required for the right of franchise are usually payment of taxes, educational qualification and holding of property. But there is no uniformity in the standard of these requisite qualification between the different communities, nor among the different provinces. The franchise has been extended to all women (a) who possess a property qualification in their own right, (b) who are the widows or wives of men with property qualification; but only one wife of a qualified voter can vote. In case a person has more than one wife either the first or the one nominated by the husband can exercise franchise, (c) women who are the wives of men with a military service qualification for the vote; (d) who are pensioned widows and mothers of Indian officers, non-commissioned officers or soldiers, or members of the Regular Forces or of any British India Police Force and (e) who have the educational qualification have been given the right to vote.

The franchise has been extended from 3 per cent of the population under the Mont-Ford Constitution to 14 per cent of the total population. The total gross electorate in British India is estimated to be 35 million, of whom 29 are male voters and 6 million women voters. The percentage of voters to the total adult population is 27. In the case of males alone the percentage to the total adult male population is 43 per cent. Of the women voters only 3 lakhs are qualified by education, 20 lakhs by property and 40 lakhs by wifehood.

It is superfluous to mention that many of the Indian voters are illiterate. They have very little power of judging the merits of the programme of different parties. Caste, section and religion are often the uppermost consideration in the mind of the electors. Zemindars, money lenders and employers exercise undue influence on the voters at the time of election. Women very often vote

in the same way as their husbands. The prevalence of the Purdah system makes it easy for women voters to make false personation. A small percentage of voters care to come to the polls. In the last general election (1937) the percentage of voters who polled to the number of voters in contested Constituencies for Provincial Assemblies was as follows. North-West Frontier Province 72.8%, Assam 71.35%, Punjab 63.7%, Behar 59.22%, Orissa 58.87%, U. P. 58.3%, C. P. & Berar 54.8%, Sind 54.2%, Bombay 51.7%, Madras 51.6%, Bengal 40.5%. It is curious that in the advanced provinces like Bengal, Madras and Bombay the callousness of voters was most pronounced. It is also noticeable that larger the total number of voters in a Province, the lower the number of voters coming to the polls. Thus, Bengal (6,695,483) and Madras (6,436,760) having the largest number of voters recorded the lowest percentage of votes; while the percentage of votes recorded was highest in the North-West Frontier Province and Assam because in these two Provinces the total number of voters was 246,609 and 815,341. The reluctance to go to the polls is more marked among women than among men. In Bengal, where there were nearly nine lakhs of women voters, and where there are so many leaders of women movement, only 46,758 women voters, that is 5.2 per cent of the total strength cared to exercise their franchise. The experience of the first general election with the enlarged electorate shows little hope of success of universal adult franchise in India. Difficulties of communication and conveyance which stand in the way of approaching the electors by the candidates, apathy and ignorance of the illiterate voters and indifference of some of the educated persons to the value of the Reform, have contributed to the comparative failure of the electors to come to the polls.

The separate electorate system has given special weightage to the Europeans, the Sikhs and Mussalmans. In the Provincial Assemblies, the Europeans have got 26 seats and may capture 22 to 24 seats out of the 56 seats reserved for representatives of commerce and industry, mining and planting, where they preponderate. This means representation of about 3 per cent but their population strength is less than  $\frac{1}{15}$  of one per cent. In the Federal Assembly they may secure  $5\frac{1}{2}$  per cent of seats. The Sikhs constitute 13% of the population of the Punjab, but they have been given 18% of seats in the Provincial Assembly. In the North-West Frontier Province they have 2% population, but have been allotted 6% seats in the Provincial legislature. The Mussalmans in Madras have got more than 13 per cent of the seats as against 7.1 per cent of the population; in the U. P. more than 27 per cent of the seats against 14.8 per cent of the population. In Behar and Orissa taken together their allotted ratio of representation is more than

Weightage  
in  
Communal  
electorate

double their population ratio. Thus weightage has been given to some minority communities in many provinces. But in the case of the Hindus in the Punjab and Bengal, where they are in minority, not only has no weightage been given but also lower number of seats has been allotted to them than what is warranted by their population strength in these Provinces. For instance in Bengal, the Hindus constitute 44·8 per cent of the total population and 48·3 of the adult population. Leaving the 51 seats reserved for Europeans, Anglo-Indians and special interests there are 199 seats to be divided between Hindus and Moslems. If these seats were divided in proportion to the total population, Mussalmans get 109 and Hindus 90 seats. But according to the Communal Award, the Hindus have got 80 and Mussalmans 119 seats.

### XIII. Provincial Finance

Under the present Constitution the Provincial Governments have to bear the main burden of the nation-building services, and provincial expenditure will have to increase largely. An increase of provincial revenue is urgently required. The per capita expenditure on education and public health in thickly populated Provinces of Bengal and Behar is deplorably low. The following figures relating to 1931-32 show the pitiable state of revenue and expenditure in the Provinces under Mont-Ford Reforms.

| Province       | Population<br>in million | Revenue<br>in Crores<br>of rupees | Expen-<br>diture in<br>Crores of<br>rupees | Expenditure<br>per head of<br>population |
|----------------|--------------------------|-----------------------------------|--|--|
|                |                          |                                   |  | Rs As.                                   |
| Madras         | 46·7                     | 16·2                              | 16·2                                       | 3 7                                      |
| Bombay         | 21·9                     | 14·8                              | 15·2                                       | 6 12                                     |
| U. P.          | 48·4                     | 11·2                              | 11·8                                       | 2 5                                      |
| Bengal         | 50·1                     | 9·0                               | 11·0                                       | 1 18                                     |
| Behar & Orissa | 37·6                     | 5·1                               | 5·4  | 1 5                                      |
| Punjab         | 23·5                     | 9·9                               | 10·3                                       | 4 3                                      |
| C. P.          | 15·5                     | 4·1                               | 4·5  | 2 10                                     |
| Assam          | 8·6                      | 2·4                               | 2·4  | 2 12                                     |

As far as expenditure per capita is concerned Behar stands last, and Bengal is the seventh in this list. Behar had seven deficit years from 1921-22 to 1932-33 and only four surplus years involving a total deficit of well over a crore of rupees. From 1926 to 1937 Bengal suffered from chronic deficits except during the years 1928-29 and 1929-30. Her uncovered deficits have averaged about Rs. 2 crores per annum. She had to take loans from the Central Government and had to pay heavy interest on them.

The new financial arrangement had to reckon with these facts. The Neimeyer Report, accepted by the Government, has made the following scheme for giving relief to the Provinces.

(1) In the cases of Bengal, Behar, Assam, the N. W. F. P. and Orissa, the whole, and in the case of the Central Provinces, a part of the debts contracted to the centre prior to the 1st. April, 1936, has been wiped off, and this has meant a net annual saving of some lakhs in each of these Provinces. (2) The share of the Jute Export duty distributable to Provinces has been increased from 50 to 62½ per cent. Bengal had been receiving about 160 lakhs of rupees on account of Jute Export duty; now she has got a further sum of 42 lakhs annually. (3) Cash subvention is to be given to certain deficit Provinces. (4) Fifty per cent of the net Income-tax proceeds will be distributed to Provinces when railway finance improves, that is, for all practical purposes after ten years. After the separation of Burma the Income-tax proceeds amount to 13·6 crores of which 1·75 crores represent receipts from companies, Chief Commissioner's Provinces and salaries of the servants of the Federal Government. Of the remaining sum of about 12 crores of rupees, 6 crores will be distributed in the following proportion: Madras and U. P. 15%, Bombay and Bengal 20%, Behar 10%, the Punjab 8%, C. P. 5%, Assam, Sind and Orissa 2% each and the N. W. F. P. 1%. The following table will show the amount of assistance received by each Province immediately:—

Otto Nieme-  
yer's scheme  
of giving  
relief to  
Provinces

Allocation  
of proceeds  
of the  
income tax

| Province    | Saving on account of debt-cancellation (in lakhs of rupees) | Further revenue from Jute Export duty (in lakhs of rupees) | Cash grant from the Centre (in lakhs of rupees) | New sources of income of certain provinces |
|-------------|---|--|---|--|
| Bengal      | 33  | 42   | ×   |  |
| Behar       | 22  | 2·5  | ×   |  |
| C. P.       | 15  | ×  | ×   |  |
| Assam       | 15·5  | 2·25   | 30  |  |
| N. W. F. P. | 12  | ×  | 100   |  |
|             |   |  | (after 5 years to be reconsidered)              |  |
| Orissa      | 9·5   | 0·25   | 40  |  |
| Sind        | ×   | ×  | 105   |  |
| U. P.       | ×   | ×  | 25  |  |
|             |   |  | (for 5 years)                                   |  |

The subvention to Sind is granted for ten years after which

it will gradually diminish till it disappears with the extinction of the Sukkar Barrage debt in about 45 years.

No relief to the Punjab, Madras and Bombay. No relief is given to the Punjab, Madras and Bombay. Under the new Constitution Behar has an increase of revenue on the following heads :

|   |           |
|---|-----------|
| On account of separation of Orissa                  | 8 lakhs.  |
| Share of Jute Export duty                           | 12½ lakhs |
| On account of cancellation of debt to Central Govt. | 11½ lakhs |
| <hr/> Total 32 lakhs annually                       |           |

It is quite palpable that this paltry increase in Provincial revenue is grossly insufficient for increasing expenditure on education, sanitation, agriculture and industries. The Constitution has empowered the Provinces to supplement the grants from Federal taxation by revenues from taxes raised by them on land as land revenue ; taxes on land and buildings, hearths and windows ; taxes on agricultural income and duties in respect of succession to agricultural land ; duties of excise on goods manufactured or produced in the Province and counter-veiling duties on certain kinds of goods produced or manufactured elsewhere in India, taxes on mineral rights subject to any Federal restrictions imposed in respect of mineral development ; taxes on professions, trades, callings and employments ; taxes on animals, boats, the sale of goods, advertisements, on luxuries including entertainments, amusements, betting and gambling ; cesses on the entry of goods into a local area ; dues on passengers and goods carried on inland waterways ; tolls ; stamp duties in respect of documents not included in the Federal List.

The Mont-Ford Constitution allowed the Provinces to borrow indeed, but it was difficult for them to exercise this right under the conditions and limitations laid down in the Constitution, or the Devolution Rules framed thereunder. Under the new Constitution the Provincial Executive can borrow inside India ; but the consent of the Federal Government is necessary for raising any loan outside India. The Provincial Legislature may by Act prescribe the limits of such borrowing, and lay down the nature of the guarantees that can be offered for such loans. The Madras Government borrowed three crores of rupees for financing various useful schemes of social service.

Section 136 of the Act says that the expression "Revenues of the Province" includes all revenues and public moneys raised or received by a Province. This means that borrowed money too is to be treated as Revenues of the Province. Section 150 provides that : (1) No burden shall be imposed on the revenues of the

Provincial  
sources of  
revenue

Borrowing  
power of the  
Provinces

Power of  
the Execu-  
tive to spend  
revenues  
for "the  
purposes of  
India"

Federation or the Provinces except for the purposes of India or some part of India. (2) Subject as aforesaid, the Federation or a Province may make grants for any purpose, notwithstanding that the purpose is not one with respect to which the Federal or the Provincial Legislature, as the case may be, may make laws. "When all the income," observes Prof. K. T. Shah, "whether in the nature of capital receipts or revenue proper, are pledged, as it were, for 'the purposes of India',—even if the particular purpose in any given case is not one on which the Legislative authority for the entity is entitled to make laws, and, therefore, with respect to which the ordinary Constitutional Executive have no authority to act—these extra-legal purposes can be financed out of 'the revenues of India' by the Supreme Executive officers—Federal or Provincial."

The budget estimates of 1939-40 of the different Provinces given below may be compared to the figures for income and expenditure of 1931-32 given before with a view to judge how far the financial position of Provinces has improved under the new Constitution.

| Province.     | Revenue in lakhs of rupees. | Expenditure in lakhs of rupees. | Balance (+) or Deficit (—) |
|---------------|-----------------------------|---------------------------------|----------------------------|
| Madras        | 16.23                       | 16.40                           | - 17                       |
| Bengal        | 13.78                       | 14.65                           | - 87                       |
| U. P.         | 13.23                       | 13.69                           | - 46                       |
| Bombay        | 12.55                       | 12.88                           | - 28                       |
| Punjab        | 11.67                       | 11.96                           | - 29                       |
| Behar         | 5.88                        | 5.87                            | + 1                        |
| C. P. & Berar | 4.85                        | 4.83                            | + 2                        |
| Sind          | 3.83                        | 3.76                            | + 7                        |
| Assam         | 2.84                        | 3.01                            | - 17                       |
| N. W. F. P.   | 1.93                        | 1.86                            | + 7                        |
| Orissa        | 1.84                        | 2.02                            | - 18                       |

This shows that most of the Provinces are running on deficit, and yet they are not being able to spend a reasonably sufficient sum on education, sanitation and the improvement and expansion of agriculture and industries.

Most of the Provincial Governments have sacrificed a portion of their Excise revenue, and the Congress Provinces are

pledged to a programme of thorough-going prohibition. In the year ending 1937, revenue from Excise amounted to 395 lakhs in Madras, 325 lakhs in Bombay, 136 lakhs in Bengal, 152 lakhs in the U. P., 136 lakhs in Behar, 254 lakhs in the C. P. and 103 lakhs in the Punjab. The Bengal Government has sacrificed only 30 thousand rupees and her Prime Minister stated on the 2nd December, 1939, his unwillingness to sacrifice any more of excise revenue at present. Even without the sacrifice of this

**Problem of  
revenue  
from Excise**

revenue the financial position of Provinces is a deplorable one. If the Provinces carry out the policy of total prohibition and do not find out other sources of income it would be impossible for them to undertake any nation-building programme. The sources of revenue allocated to the Provinces are mostly inelastic in character. Land revenue accounts for about half of the total revenues of the Provinces. There is no scope for increasing the amount of land revenue in any Province. But Agricultural Income-tax

**Means of  
improving  
Provincial  
revenues**

may be levied on Zamindars, who had so long been exempt from the payment of Income-tax. The Behar Government has imposed this tax on incomes from land worth 5000 rupees or more a year and expects that it will bring about forty lakhs of rupees to the Treasury. Such a tax has the advantage of discouraging un-economic investments in land of savings accumulated in service, trade and industry with a view to escape from Income-tax. The sources of Provincial revenues next in importance to land revenue and excise are stamps and receipts from forests. With the expansion of trade and industry income from Stamps may increase. Forests may yield additional revenue after a long term of years if an enlightened policy of forest-development is pursued. Such a development would be of immense help to agriculture and industries in the long run. The Provinces may get a larger share of Income-tax revenue if the Central finance shows much improvement in other directions. If the Central Government establishes monopolies in Tobacco and Matches, it may derive much income without impairing efficiency in these industries. The Constitution of 1935 allows the Provinces to impose taxes on land and buildings, hearths and windows, and on professions. But to impose such taxes would be injurious to the general welfare of the country. Taxes on advertisements, luxuries, and entertainments have been imposed on some Provinces but the yield from these taxes can not be a large one. Dr. Piplani suggests that the Provincial Governments should turn their attention to non-tax revenues. He adds: "All kinds of agricultural and industrial property and mineral resources will have to be administered under suitable commercial policies with the

utmost economy. The commercial enterprises of monopoly character, or to use their common name, public utilities such as electricity, mines, forests, cement works etc., have to be socialised, if not already owned by the Governments, and transformed into important sources of revenues". This, however, is a highly controversial matter, and it would not be easy for any Provincial Government to socialise these industries in the teeth of opposition of vested interests. The ultimate source of increased revenue must be the improved economic condition of the masses; and every attempt should be made to develop the resources of the country in such a way as to give suitable employment to all able-bodied persons. In the attempts to solve the problems of Provincial finance, however, we should always bear in mind the need of safeguarding the solvency of the Central Government. The Central Government will have to perform important functions connected with the economic development and the social welfare of the country. Dr. P. J. Thomas in his recently published work, *The Growth of Federal Finance*, utters a note of warning against an undue reaction from the former policy of financial centralization. In his view, we have grumbled too long and too much about the present burden of taxation being too heavy for India. We would do well to be more enterprising both as regards our taxing policy and our borrowing policy. Dr. Thomas pleads for the proper co-ordination of the new financial policy with a new economic policy—both being based on a sound and well-devised system of national planning.

#### XIV. Possibility of automatic development of the Provincial Constitution

The Constitution of the Indian Provinces as well as of the proposed Federation under the Government of India Act of 1935 is rigid in character, in as much as Indians cannot change materially the system of Government. It is the British Parliament which has made the Constitution and it alone can repeal, amend or modify it. But Section 308 of the Act allows the Federal and the Provincial Legislature the power to move resolutions asking for changes in respect of following matters only : (a) the size and composition of the chambers of the Federal Legislature and the choice and qualifications of members, but not so as to vary the relative proportion between the Council and Assembly or between the British India and State seats ; (b) the number of chambers in the Provincial Legislature, their size or membership ; (c) any amendment as to the qualification of voters. But changes even in these comparatively minor matters can be effected only after an elaborate procedure. No change can be proposed

Section  
308 of  
the Act



as a rule earlier than ten years after the establishment of Provincial Autonomy. The Council of Ministers must agree to such changes and move the motion. If the motion is passed, an address is also to be passed requesting the Governor or the Governor-General as the case may be, to communicate such resolution to the Secretary of State. The Secretary of State will make a statement in Parliament within six months of the receipt of this communication describing the action he proposes to take on the said resolution. The Governor-General or Governor has to send with the address a statement of his opinion on the proposed amendment, its effect on any minority, the views of that minority, and whether it is supported by the majority of the representatives of that minority in the Legislature. Then the desired change may be brought about by an Order in Council. It has been suggested by some writers that the system of communal representation, based on Communal Award may be rectified in this way. But it is difficult to conceive of such a sudden change of heart in the privileged minority communities that they will willingly agree to sacrifice the privileges they have won by the Communal Award.

Apart from Section 308 of the Act, the Constitution may be developed by the growth of Conventions. It has already been pointed out that the Governors refrained from exercising their rights of using 'Discretion' and 'Individual judgment' in many cases in the Congress Provinces. It cannot be said, however, that the Governors gave up those powers altogether. Again, the growth of Conventions may change and actually has changed the relation between Ministers and the Civil Service. Sections 240 and 241 are intended to place the members of the Indian Civil Service virtually beyond the control of the Ministers, but the Ministers have been able to control them effectively. The Provincial Legislature can pass resolutions abolishing posts of the rank and pay of All-India Services for reasons of economy; and the Governor may be advised by the Ministry to take steps to give effect to such resolutions. No Dominion Constitution does provide that Ministers are responsible for the government of the country, or that the representative of the Crown must accept the 'aid and advice' of his Ministers; yet these have become the time-honoured customs of the Dominion Constitutions. May we not hope for the growth of similar Conventions? But the scope for the growth of Conventions in a rigid Constitution like that of India is rather limited.

### XV. Work of popular Ministers in the Provinces

The inauguration of Provincial Autonomy on the 1st April,

1937 and especially the acceptance of Ministry by the Congress in the majority of the Provinces, ushered in a new era of feverish activity in the sphere of nation-<sup>Popularity of Ministers</sup> building departments. People have come to realise that the Government is not something outside them, seeking to control individual liberty, but an agent of social welfare. No other system of government in British India had ever been able to evoke that degree of popular support and enthusiasm as was done by the recent Government, especially in the Congress Provinces. The Ministers, who had been considered parts of the bureaucratic machine under Dyarchy, came to be regarded as the true representatives of the people.

The first problem that faced the Ministers was that of finance. With the extremely limited resources at their disposal and with the pledge to sacrifice the Excise Revenue, they found themselves handicapped in all their efforts <sup>Increased taxation</sup> to ameliorate the condition of the people. They had to find out new sources of revenue. The most important source of additional revenue is the Agricultural Income Tax, which has been imposed in Behar and Assam only. The Madras Legislature passed the Sales Turnover Tax Bill, by which  $\frac{1}{2}$  per cent on all turnover exceeding Rs.10,000 per annum is imposed. Dealers whose turnover is less than Rs.10,000 will pay Rs. 5 per month. Stocks and shares, securities, bullion, cotton and handwoven cloth sold by persons dealing in them exclusively are exempted from liability to pay the tax. The incidence of such a tax may be regressive in character. The Madras Government has also levied a special tax on the sale of tobacco. The U. P. Government has increased slightly the duty on stamps and proposed to levy an Employment Tax. The Bombay Legislature has passed the Bombay Sales Tax Act, 1939, by which Government can levy a tax at a rate not exceeding  $6\frac{1}{4}$  per cent on the value of the sale of motor spirit and manufactured cloth. The Punjab, Bengal, Behar, Assam and Madras have also imposed taxes on retail sales of motor spirit. Amusement and betting taxes have been imposed in most of the Provinces. The Bengal Government has levied an ungraduated tax of Rs.30 on all persons paying Income-taxes.

The Ministers in all the Provinces have tried to improve the condition of tenants by passing a series of landlaws. The Bengal Tenancy (Amendment) Act, 1938, has made provision for abolition of landlord's transfer fees <sup>Relief to tenants</sup> and the right to pre-emption, giving under-riyats the right to surrender their holdings, imposing fine for the exaction of Abwabs, giving occupancy under-riyats the same rights of transfer as occupancy riyats, and reducing the rate of

interest on arrears of rent from  $12\frac{1}{2}$  per cent to  $6\frac{1}{2}$  per cent. The Behar Government has taken elaborate steps to reduce the enhancement of rent made since 1911 ; to restore to former tenants certain lands sold for arrears of rent during a period of an unprecedented fall in prices ; to abolish the system of summary procedure for recovery of rent by landlords, to define the rights of tenants in trees and to give them the right of transferring their holding or a portion of their holding freely without restriction. The Bombay Government has provided for the relief to tenants in bad years and for freeing them from the burden of unregulated cesses and demands of all descriptions. The United Provinces Rent and Revenue (Relief) Act, 1938, gives relief to the tenants in rent and revenue in cases of agricultural calamities. Some Provinces, like Behar, Orissa, Madras and the United Provinces have made provisions for regulating and controlling the business of money-lending. The Behar Money Lender's Act provides for the registration of money-lenders. The registration is compulsory in as much as it provides that no suit for the recovery of a loan will be maintainable except by a registered money-lender. It is made obligatory on every registered money-lender to keep proper accounts, to give the debtor a copy of the recorded account within seven days of advancing the loan, to give a receipt for every sum paid by the debtor, and also to furnish a statement of account to the debtor at least once every year. The rate of interest has been limited to 9 per cent in case of secured and 12 per cent in case of unsecured debt.

The various Provincial Governments have passed laws to make the constitution of local bodies more democratic. In Behar, provision has been made for the reservation of seats for the Muslim community through joint electorate in Municipalities, and for the co-option of members up to a maximum limit of one-eighth of the total number of seats. The Bombay Government has abolished nominations, and introduced adult franchise in the Bombay Corporation, and other Municipal Boards. The C. P. Municipalities (Amendment) Bill of 1939 provides for the election of the President of a Municipal Committee by the general body of voters, for the removal of the President on a no-confidence motion carried by a bare majority and for the increase of terms of office of members from three to five years. The Punjab Government has introduced a bill to consolidate and extend the law relating to Panchayats in the Punjab. The Bombay Village Panchayats Act provides for the compulsory establishment of Panchayats for every local area having a population of 2000 or more, for abolition of the system of nominations and *ex-officio* members ; for establishment of

Reforms of  
local bodies

village benches for every Panchayat and for appeals to District Courts and District Magistrates in cases decided by village benches. The Bengal Legislature has passed the Calcutta Corporation Act by which separate electorates have been established for Muhammedans and seats far greater in number than what is warranted by the strength of the Muhammedan population in Calcutta have been provided for them.

The Ministers in most of the Provinces have tried their best to help industries. Many Provinces have taken steps to improve the marketing of agricultural commodities. The All-India Congress Working Committee passed a resolution on the 25th July, 1938, on the development of industries in the Provinces 'authorizing the Congress President to convene a conference of Ministers of Industry at an early date and call for a report of the existing industries operating in different Provinces and the need and possibilities of new ones as preliminary to the appointment of the Expert Committee to explore possibilities of an All-India industrial plan'. The Expert Committee with many sub-committees have been appointed and have begun their work. Bihar has taken the lead in spreading literacy among the adult illiterates by mobilising the services of primary school teachers, college students and the country gentry. Her example has been followed in the United Provinces, Bombay, Assam and some other Provinces. It is a remarkable thing that the Provincial Governments have not been put to any considerable expenses for carrying on this highly laudable work. The middle class people have set before themselves the task of educating our masters, the electorate. The Congress devised the Wardha Scheme of basic education of children.\*

Other  
nation-  
building  
schemes

The nationalist opinion in India had been demanding for a long time reforms like the separation of the Executive from the Judiciary, reduction of expenditure on police, giving up of the use of Criminal Law Amendment Act. But when the politicians shouldered responsibility, they realised that under present circumstances it is not possible to carry out such reforms.

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\* Zakir Husain Wardha Education Committee Report proposes to impart education to children between 7 and 14 years of age who are expected to pay for their education by their own labour. The time table of the Basic Education Schools will be as follows :

|                                    |                       |
|------------------------------------|-----------------------|
| The basic craft                    | 3 hrs. and 20 minutes |
| Music, drawing and arithmetic      | 40 minutes            |
| The mother-tongue                  | 40 minutes            |
| Social studies and general science | 30 minutes            |
| Physical training and recess       | 20 minutes            |

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Total ... 5½ hours

## CHAPTER XXXVIII

### THE EXISTING CENTRAL GOVERNMENT OF INDIA

#### I. The present position of the Central Government

Part II of the Government of India Act of 1935 provides for the establishment of the Federation. Part XIII of the Act makes provision for the Central Government in India in the period elapsing between the commencement of Provincial Autonomy, as provided by Part III of the Act, and the establishment of the Federation. The Viceroy declared on October 17, 1939, that the Federation will not be inaugurated now and that at the end of the war "His Majesty's Government will be very willing to enter into consultation with representatives of the several communities, parties and interests in India, and with the Indian Princes, with a view to securing their aid and co-operation in the framing of such modifications as may seem desirable." The Executive and Legislative machinery in the Centre, therefore, remains much the same as that under the Government of India Act, 1919. But the relations of the Centre with the autonomous Provinces are determined by the jurisdiction listed in Schedule Seven, giving the Federal, Provincial and Concurrent legislative lists. Thus, the legislative and fiscal relations between the Provinces and the Centre are clearly demarcated. The Political Department had been under the jurisdiction of the Executive Council of the Governor-General up to the 31st March, 1937; but from the 1st April, 1937, it has been put under the exclusive charge of the Viceroy as representative of functions of the Crown in its relations with the Indian States. Sub-section 4 of Section 313 of the Government of India Act, 1935 lays down: "Any requirement in this Act that the Governor-General shall exercise his individual judgment with respect to any matter shall not come into force until the establishment of the Federation, but, notwithstanding that Part II of this Act has not come into operation, the following provisions of this Act, that is to say—(a) the provisions requiring the prior sanction of the Governor-General for certain legislative proposals; (b) the provisions relating to broadcasting; (c) the provisions relating to directions to, and principles to be observed by, the Federal Railway Authority; and (d) the provisions relating to Civil Services to be recruited by the Secretary of State, shall have effect in relation to defence, ecclesiastical affairs, external affairs and the tribal areas as they have effect in relation to matters or functions with respect to, or in the exercise of, which the Governor-General is by the

provisions of this Act for the time being in force required to act in his discretion and any reference in any of the provisions of this Act for the time being to the Special Responsibilities of the Governor-General shall be construed as a reference to the Special Responsibilities which he will have when Part II of this Act comes into operation." Though the Federation has not been established yet the Federal Public Service Commission and the Federal Court have been established and the Federal Railway Authority may be set up according to the provisions of Section 318 of the Constitution Act of 1935.

## II. Functions of the Government in India

So far as functions of Government are concerned, India approaches the ideal of a Collectivistic State. The people of India had depended a good deal on Government in the past and had held it responsible even for drought and premature death. The old tradition of paternal government has been taken up by the British Government in India. "The functions of the Government in India are perhaps the most extensive of any great administration in the world. It claims a share in the produce of the land and in the Punjab and Bombay it has restricted the alienation of land from agriculturists to non-agriculturists. It undertakes the management of landed estates where the proprietor is disqualified. In times of famine it undertakes relief work and other relief measures on a great scale. It manages a vast forest property and is the principal manufacturer of salt and opium. It owns the bulk of the railways of the country, and directly manages a considerable portion of them; it has constructed and maintains most of the important irrigation works; it owns and manages the post and telegraph systems.....It lends money to municipalities, rural boards, and agriculturists and occasionally to owners of historic estates. It controls the sale of liquor and intoxicating drugs and has direct responsibilities in respect to police, education, medical and sanitary operations and ordinary public works of the most intimate character."

## III. The Central Executive

The Central Executive Government in India is vested in the Governor-General in Council. The Governor-General as well as the members of his Council are appointed by His Majesty. They are wholly responsible to the Parliament and not to the Indian Legislature. No vote of the Indian Legislature can bring about a change in the composition of the Central Executive. In constitutional theory,

Paternal  
Government

The  
Governor-  
General in  
Council

therefore, the Government of India is a subordinate official government under His Majesty's Government.

Besides the Governor-General, there are seven members in Governor-General's Executive Council. (1) The Army Member or the Commander-in-Chief. (2) The Home Member, who is in charge of the All-India Civil Services, and of such subjects

as police, prisons and judicial matters so far as these subjects are the concern of the Central Government.

(3) The Law Member is the head of the Legislative Department, and is responsible for the drafting of Government Bills. (4) Finance Member. (5) The Commerce Member not only controls commerce but also is in charge of the Railway Department. (6) Member in charge of Education, Health and Lands. (7) Member in charge of Industries and Labour. The Governor-General himself is in charge of the Foreign and Political Departments. The office of the Law Member has been invariably filled by some eminent Indian Lawyer, and that of the Finance Member by a member of the British Treasury. Three of the members of the Executive Council must be persons who have been for at least ten years in the service of the Crown in India. A convention has grown to the effect that three out of the seven members are chosen from among qualified Indians, and one of these three is usually a Muhammedan gentleman.

- The Governor-General appoints a member of the Executive Council as Vice-President, and the Council meets at such places as he fixes. He has got the right to make rules and orders for the more convenient transaction of business in his Executive Council. The Governor-General is ordinarily bound by the opinion and decision of the majority of the members present in his Council. But if he thinks that the safety, tranquillity or interests of British India is concerned, he can override his Council.

There are only two slight points of similarity between the Cabinet and the Executive Council of Governor-General. First,

like the Cabinet, the Executive Council consists of the heads of the most important departments who take counsel together and determine the general policy. Secondly, like the members of the English Cabinet, the members of the Executive Council sit in the Legislature and lead and guide it. The position of the Finance Member is somewhat analogous to that of the British Chancellor of the Exchequer.

But the Governor-General's Executive Council lacks the well-known characteristics of the Cabinet System. It has neither the homogeneity and solidarity nor the collective responsibility of the Cabinet. The members of the British Cabinet are

responsible to Parliament. They must resign as soon as they lose the confidence of the House of Commons. But neither the Legislative Assembly, nor the Council of State has any power to remove any member of the Executive Council from his office. Then again, the members of the British Cabinet ordinarily belong to one political party, while the members of the Executive Council belong to different parties or to no party at all. "In the case of the Governor-General's Executive Council," says Sir T. B. Saprú, "the Governor-General may be a Conservative, one member may hold advanced views on internal politics, while another may hold views of just the opposite character. Besides, it may very well happen that the Governor-General has to deal with members in the selection and appointment of whom he has no hand. Theoretically, it is true that the responsibility of the Governor-General's Executive Council is collective and it must act as a united whole in relation to the outside world. But in point of fact it may very frequently happen that the decision of the Governor-General in Council represents the views of only a section of it"

A member of the Executive Council may differ with the decision of the majority of his colleagues on an important issue and may resign his office. But unlike the Cabinet member he has no electorate to go. His resignation cannot alter the composition of the Executive Council. Then again, the English Cabinet is unhampered by any outside control, but the policy of the Executive Council may be dictated by the Secretary of State for India.

Control of  
the Secre-  
tary of State

#### IV. Powers and Functions of the Governor-General

The Governor-General of India holds "the most responsible, as it is the most picturesque and distinguished office in the over-seas service of the British Crown." The Governor-General in the self-governing Dominions performs only some social and benevolent functions, but the Governor-General of India takes a direct share in the government of the country. He is responsible to the Secretary of State for the good government, safety and tranquillity of British India. He is bound to obey all such orders as he may receive from the Secretary of State. The Governor-General is not subject (1) to the original jurisdiction of any High Court by reason of anything counselled, ordered or done by him in his public capacity only, (2) to the original criminal jurisdiction of any High Court in respect of any offence not being treason or felony, (3) to the liability of being arrested or imprisoned in any suit or proceeding in any High Court acting in the exercise of its original jurisdiction.

Position  
of the  
Governor-  
General



The Governor-General enjoys some powers as the representative of the Crown in India. The most important of these powers is the exercise of the Royal Prerogative to grant pardons to offenders convicted by Courts of Justice. These powers are conferred by the Royal Warrant appointing the Governor-General. According to Section 3 of the Government of India Act, 1935 the Governor-General and His Majesty's Representative for the exercise of the functions of the Crown in its relation with Indian States may be two different persons. At present both of these offices are held by one and the same person.

Most of his other powers are statutory in character. These powers may be classified under three heads—administrative, financial and legislative. His most important administrative powers are : (1) To appoint the Vice-President of his Council, Council Secretaries, and the President of the Council of State. If in any matter he thinks that the safety, tranquillity and interests of British India, or any part thereof, are essentially affected, he may override the decision of his Council. (2) "The rules for the transaction of Council business, the allocation of portfolios among its members, and the limitation of their scope, are entirely subject to his final decision". (3) He has the power to summon meetings of the Legislature, prorogue the sessions and to dissolve either chamber of the Legislature, or to extend its ordinary term and after such dissolution to call for a general election.

Section 67-A (2) prescribes the power of the Governor-General with regard to financial matters. According to it, no proposal for the appropriation of any revenue or moneys for any purpose shall be made except on the recommendation of the Governor-General. He can with the assent of the Council restore grants refused by the Assembly and on his sole initiative authorise such expenditure as he thinks to be necessary for the safety or tranquillity of British India or any part thereof.

The principal powers of the Governor-General with regard to legislation are the following : (1) His previous sanction is necessary for the introduction, at any meeting of the Indian Legislature, of any measure affecting (a) the public debt or revenues of India or imposing any charge on the revenues of India ; or (b) the religion or religious rites and usages of any class of British subjects in India ; or (c) the discipline or maintenance of any part of His Majesty's Military, Naval or Air Forces, or (d) the relations of Government with foreign Princes or States ; (2) any

measure, regulating any Provincial subject, or any part of a Provincial subject, which has not been declared by rules under this Act to be subject to legislation by the Indian Legislature, or (3) repealing or amending any Act of a Local Legislature, or (4) repealing or amending any Act or Ordinance made by the Governor-General

The Governor-General can insist on the passing of legislation rejected by either or both Chambers by certifying that such passage is "essential for the safety, tranquillity or interests of British India or any part thereof" (Section 67-B). It should be noticed here that the inclusion of the word "interests" makes the power of the Governor-General very wide. The Governor-General certified under this Section the Princes' Protection Bill of 1922 and the Finance Bill raising the salt duty in 1923. If Section 67-B gives him the positive power of law-making, Sections 68 and 81 empowers him to exercise a negative control on the Indian Legislature. He may withhold his assent to any Bill, Central or Provincial or reserve such Bill for His Majesty's pleasure. Under Section 72 he has powers in an emergency, without consulting Legislature, to legislate by Ordinance having effect for not more than six months.

Scope of  
certifying  
power

Veto power

## V. The Indian Legislature

Technically speaking, the Indian Legislature consists of the Governor-General and two Chambers, namely, the Council of State and the Legislative Assembly. But ordinarily, the term Indian Legislature signifies the two chambers only. The Legislative Assembly now consists of 143 members, of whom 102 are elected (including one member to represent Berar, who though technically nominated, is appointed on the result of election held in Berar) Of the 41 nominated members 22 are official members and 19 are nominated non-officials.\* The official members include most of the members of the Governor-General's Council, important members of the Government of India's Secretariat and the nominated representatives of the different Provincial Governments. The nominated non-officials include the representatives of the Depressed classes, of the Indian Christians, of the Anglo-Indian community, of labour interests, etc. 48 out of the 102 seats filled by election are "non-Muhammadan" general constituencies, whether rural or urban. 30 seats are reserved for the

Composition  
of the  
Legislative  
Assembly

\* Of the non-official elected members Bengal sends 17, Madras, Bombay and the United Provinces 16 each, the Punjab 12, B. & O. 12, C. P. & Berar 6, Assam 4, Delhi 1, Ajmer-Merwar 1, the N. W. F. P. 1.

Muhammadans, 2 for the Sikhs, 9 for the Europeans, 7 for the Landholders and 4 for Indian Commerce, 1 from Delhi and 1 from Ajmer-Merwar are elected by non-communal constituencies.

The term for which the members are generally elected is three years. But the Governor-General can extend the period or dissolve the Assembly at any time he likes. The President of the Assembly is elected by its own members.

The Council of State consists of 58 members of whom 32 are elected and 26 nominated; of the nominated members not more than 20 are to be official members. Franchise is extremely restricted for the Council of State. "Property qualifications have been pitched so high as to secure the representation of wealthy land-owners and merchants; previous experience in a Central or Provincial Legislature, service in the chair of a Municipal Council, membership of a University Senate, and similar tests of personal standing and experience in affairs qualify for a vote." The President for the Council of State is nominated by the Governor-General. Its life extends for five years, but it may be dissolved at any time by the Governor-General.

The Indian Legislature has power to make laws for all persons, courts, places, and things within British India for all subjects of His Majesty and servants of the Crown within other parts of India and for all Indian subjects of His Majesty without and beyond, as well as within British India.

This wide power of the Indian Legislature is restricted by certain other provisions of the Act. The Indian Legislature can not, without being expressly authorised by an Act of Parliament, make any law repealing or effecting any Act of Parliament passed after 1860, or any Act of Parliament enabling the Secretary of State to raise money in the United Kingdom for India; "nor can it make any law affecting the authority of Parliament or any laws affecting the written Constitution of Great Britain whereon may depend in any degree the allegiance of any person to the Crown of the United Kingdom, or affecting the sovereignty or the dominion of the Crown over any part of British India. Nor has the Indian Legislature power, without the previous approval of the Secretary of State in Council, to make any law empowering any court other than a High Court to pass a sentence of death on any of His Majesty's subjects born in Europe or abolishing any High Court."

The previous sanction of the Governor-General is required

for the introduction of any measure affecting (a) the public debt or revenues of India; (b) religion or religious rites or usages of any class of British subjects in India; (c) the discipline or maintenance of any part of His Majesty's Military, Naval or Air forces; (d) the relations of the Government with foreign princes or states; (e) any Provincial subject which has been declared by rules to be subject to legislation by the Indian Legislature; (f) any Act of a Local Legislature; (g) any Act or Ordinance made by the Governor-General.

Previous  
sanction  
of the  
Governor-  
General

According to the Order in Council of the 18th December, 1936 questions may be asked and resolutions may be moved affecting foreign relations, or relation with States in India, or relating to the affairs of such States, with the consent of the Governor-General in his discretion. Formerly, there was absolute restriction on questions and resolutions of such matters

Power of  
asking  
questions

The Governor-General has power to certify, when either chamber of the Indian Legislature refuses leave to introduce, or fails to pass in a form recommended by him, any Bill, that the passage of the Bill is essential for the safety, tranquillity or interests of British India, or any part thereof. It is to be noted here that the Bill so certified would be taken as an Act of the Indian Legislature, though both the chambers were against its passing into law. The Governor-General can veto or withhold his assent from Bills passed by the Indian Legislature. He can promulgate Ordinances for the peace and good government of India for a period of not more than six months

Anomalies  
of the  
certifying  
procedure

The Indian Legislature has a limited control over the finances of the Government of India. It has got no control over the non-votable items, which are authorised by the Governor-General in Council without being voted in the Assembly or in the Council of State. The non-votable items are :—(1) Interest and sinking fund charges on loans; (2) Expenditure of which the amount is prescribed by or under any law; (3) Salaries and pensions payable to or to the dependents of (a) Persons appointed by or with the approval of His Majesty or by the Secretary of State in Council; (b) Chief Commissioners and Judicial Commissioners; (c) Persons appointed before the 1st day of April, 1924, by the Governor-General in Council or by a local Government to services or posts classified by rules under the Act as superior services or posts; and (4) Sums payable to any person who is or has been in the Civil Service of the Crown in India under any order of the Secretary of State in Council, of the Governor-General in

Financial  
power

Council or of a Governor, made upon an appeal made to him in pursuance of rules made under the Act. (5) Expenditure classified by the order of the Governor-General in Council as (a) ecclesiastical ; (b) political ; (c) defence or military expenditure. Though this last mentioned item is non-votable, yet it was usual for the Governor-General to give directions which enabled Army expenditure as a whole to be decreased by the Legislative Assembly, though no vote on it could be taken. By virtue of the Order in Council, dated the 18th December, 1936 and the message of the Governor-General on the 5th February, 1937 the following heads of expenditure have been declared to be open to discussion : (a) Interest and sinking fund charges on loans ; (b) Expenditure of which the amount is prescribed by or under any law ; (c) Salaries and pensions payable to or to dependents of persons appointed by or with the approval of His Majesty, and Chief Commissioners and Judicial Commissioners ; (d) Any grants for purposes connected with the administration of any areas in the Provinces which are for the time being Excluded Areas ; (e) Expenditure classified by order of the Governor-General-in-Council as ecclesiastical, external affairs, defence or relating to tribal areas ; (f) Expenditure of the Governor-General in discharging his functions with regard to matters with respect to which he is required by provisions of the Constitution Act of 1935, to act in his discretion ; (g) Any other expenditure declared by the provisions of the Government of India Act, 1935, for the time being in force to be charged on Revenues of the Federation.

As regards votable expenditure, proposals are usually made in the form of demands for grants. These demands are submitted to the Assembly alone, and not to the Council of State.

#### **The Finance Bill**

The annual statement of estimated revenues and expenditure is presented to both the Chambers simultaneously, and in both discussions of main principles is permitted. The Finance Bill, which is the annual statutory authority for most of the Central taxation, comes before both the Houses, which have equal power in dealing with it.

The Assembly may assent or refuse assent to any demand, or reduce its amount. If, however, the Assembly declines to vote a demand or reduce its amount, the Governor-General may restore it, provided he is satisfied that it is essential to the discharge of his responsibility. The Government of India then acts as though the demand had received the assent of the Legislative Assembly. The Governor-General has frequently exercised this power of "restoration" of a rejected demand for a grant. The Governor-General has also the power to pass the Finance Bill by certification.

#### **Restoration of grants**

The Central Executive is not responsible to the Indian Legislature. But the Legislature exercises direct and indirect influence on the Executive. Thus the Simon Commission observe—"It (the influence) has been directly exercised in three ways. Firstly, through putting questions to Government and the moving of resolutions. Secondly, through the financial power which the Assembly possesses over votable items in the Budget. Thirdly, through the work of Standing Committees." As regards indirect influence the Commission remark: "It is important to remember that the existence of a popularly elected legislature not only operates to amend Government measures after their introduction, but has much effect in deciding what measures should be introduced. Again, existence of a body of unofficial persons with powers of interpellation sets up in the administration itself a spirit of self-criticism and a desire to avoid occasion for censure."

*Influence of the Legislature on the Executive*

The Legislative Assembly and the Council of State enjoy equal and co-ordinate powers, except in the fact that proposals for demand of grant are made only in the Assembly. The Council of State has been designed to be one of the most powerful second chambers of the world. As it enjoys much power and at the same time is constituted on different basis from that of the Assembly, conflicts between the two chambers may naturally arise. The Government of India Act and the rules made under it provide for three methods of settling differences between the two Houses. These are (1) joint committees, (2) joint conferences and (3) joint sittings. "The first is a means of forestalling differences and expediting the passage of a particular Bill. The adoption of this procedure requires a formal resolution in each chamber, and each nominates an equal number of members. The second means is to be used when a difference of opinion has arisen. At a joint conference each chamber is represented by an equal number of members, but no decision is taken. The results of a conference are to be looked for in the subsequent proceedings of either or both chambers. The case is different where the third means is adopted. Where the originating and the revising chambers have failed to reach agreement within six months of the passing of the Bill by the originating chamber, it rests with the Governor-General, in his discretion, to convene a joint sitting of both chambers, at which those present deliberate and vote upon the Bill in the shape given to it by the originating House, and on the outstanding amendments. The decision there taken is deemed to be the decision of both chambers"—(Simon Commission Report).

*Modes of settling differences between the two Houses*

## VI. Control exercised by the Secretary of State for India

The Constitution of 1919 vested the Secretary of State in Council with powers of superintendence, direction and control over all acts, operations and concerns which relate to the Government or revenues of India, and all grants of salaries, gratuities and allowances, and all other payments and charges out of or from the revenues of India. As the exercise of these powers by the Secretary of State is inconsistent with the transfer of responsibility to the Provinces and the Centre, the Constitution Act of 1935 omits all references to these powers. But the Transitional Provisions of this Act which are now in force lay down in Section 314: "(1) The Governor-General in Council and the Governor-General, both as respects matters with respect to which he is required by or under this Act to act in his discretion and as respects other matters, shall be under the General Control of, and comply with such particular directions, if any, as may from time to time be given by the Secretary of State. (2) The Secretary of State shall not give any direction to the Governor-General in Council with respect to any grant or appropriation of any part of the revenues of the Governor-General in Council except with the concurrence of his advisers."

The Council of the Secretary of State, known as the India Council consisted of not less than eight and not more than twelve members, of whom at least one half was required to have served or resided in India for at least ten years. They held office for five years but could be removed from office on an Address presented to the Crown by both Houses of Parliament. The Secretary of State could overrule the Council except in certain matters for the decision of which a majority of the Council present and voting was required. These matters were: (1) grants or appropriations of any part of the revenues of India; (2) the sale or disposal of real or personal estate and the raising of money thereon by mortgage or otherwise; (3) the making of contracts, including instruments of contract of Civil offices in India; (4) the application to the Government of India and the Provincial Governments of authority to perform on behalf and in the name of the Secretary of State in Council any of the obligations of the last two heads; (5) the passing of any order affecting the salaries of the Governor-General's Council; and (6) the making of rules regulating various matters connected with the Indian Police Services. The Council has been abolished on the 1st of April, 1937 as its powers were found "manifestly incompatible alike with Provincial Self-Government and with responsible Federal Government."

Section 314  
of the  
Constitution  
Act of 1935

Abolition  
of the  
India  
Council

In place of the Council a body of Advisers to the Secretary of State has been established. Their number will not be less than three and not more than six, and they will be appointed by him.\* At least one half of the Advisers must have served for ten years in India and they must be appointed within two years of ceasing to work in India. Their salary is at the rate of £1350 with £600 a year extra for those of Indian domicile. The Secretary of State is at liberty to consult them individually or collectively or to ignore them. He must, however, secure the consent of his Advisers in giving any direction to the Governor-General in Council with respect to any grant or appropriation of any part of the revenues of the Governor-General in Council. The Secretary of State is bound to secure their concurrence in all orders passed about the Services. The interests of the Services are thus adequately safeguarded.

Advisers of  
the Secretary of State

The salary of the Secretary of State and of his Advisers, as well as the expenses of his department including the salaries and remuneration of the staff thereof shall be paid out of moneys provided by Parliament. But the Indian Federation shall be charged such periodical and other sums as may represent the Secretary of State's expenses for performing duties on behalf of the Federation. Thus what is given up by one hand, is taken away by another. The change, however, alters the position of India Government from the recipient of a grant-in-aid (of £150,000 for India office) to an authority privileged to make a grant to the British Exchequer.

Financial  
arrangement  
under the  
Act of 1935

In constitutional theory India would attain considerable freedom from the superintendence, direction and control of the Secretary of State, when the Federation will come into existence; but in practice the power and influence of the Secretary of State would remain unaltered. Wherever the Governor or the Governor-General is authorised to act in his discretion, or individual judgment he will be under the direct control of the Secretary of State. Important subjects like Defence, External Affairs, the Political Department, the Indian Civil Service, the Indian Police Service, the Federal Railway Authority and the Reserve Bank will be amenable to his control and direction exercised through the Governor-General.

Extent of  
control exer-  
cised by the  
Home  
Government  
under the  
Act of 1935

\*The Advisers to the Secretary of State at present are: (1) Mr. E. Raghavendra Rao, (2) Sir Horace Williamson, (3) Sir Joseph Clay, (4) Sir Henry Strakosch, (5) Lt. Col. Sir H. Suhrawardy, (6) Sir J. A. Woodhead, (7) Sir Allen Parsons, (8) Dewan Bahadur S. E. Ranganathan, (9) Sir Courtney Latimer. According to Section 278 of the Act the Advisers are appointed for a term of five years; but according to Transitional Provisions, such of the advisers named above shall cease to hold office on the establishment of the Federation as the Secretary of State may direct.



## VII. The High Commissioner for India

The post of the High Commissioner for India was created under Section 29 (A) of the Act of 1919 by an Order in Council in 1920. The High Commissioner performs various agency functions on behalf of the Government of India and the Provincial Governments which were formerly discharged by the India Office. He procures stores for Indian Governments, furnishes trade information, promotes the welfare of Indian trade, and deals with the education of Indian students who go out to England for study. The Act of 1935 provides that he shall be appointed and his salary and conditions of service prescribed by the Governor-General exercising his individual judgment. He holds office for five years and his salary which is paid out of Indian revenues, has been fixed at £3000 per year. He may be authorised to act not only for the Federation, when it is established, but also for a Province, or a Federated State, or Burma. The High Commissioners of the Dominions are appointed by the Ministers of the respective Dominion and are as such free from any control of the British Government. But the High Commissioner for India is, in some respects, under the control of the Secretary of State because he is appointed by the Governor-General exercising his individual judgment.

## CHAPTER XXXIX

### THE PROPOSED FEDERATION

#### I. Position of the Indian States at Present

The Indian States are 562 in number, but 327 of them are mere estates, jagirs and other holdings, having in all eight lakhs of population only. The remaining 235 States are divided into two categories, in the first of which there are 109 States, the rulers of which are members of the Chamber of Princes in their own right, and in the second are 126 States, the rulers of which are represented in the Chamber of Princes by twelve members of their order elected by themselves. The various States differ widely among themselves in size, population, income and form of government. Hyderabad (82,698 Square miles), the biggest Indian State, is larger in area than the Province of Bengal (76,843 Square miles) though its population is only fourteen million, as against Bengal's fifty million. The income of the Nizam is nearly nine crore of rupees per year, though Bihar with more than double the population of Hyderabad has nearly half of her income. Other Indian States having more than one crore of annual income are Mysore (34 crore), Baroda (26), Travancore (24), Gwalior (24), Kashmir (22), Bhavanagar (15), Patiala (14), Jodhpur (14), Jaipur, Bikanir and Indore (each having 14 crore of rupees as annual income). States like Mysore, Baroda and Travancore can claim to have systems of administration in no way inferior to that of British India; but there are other States where the government is mediaeval in structure and feudal in spirit.

Number and  
character of  
the Indian  
States

The Indian States surrendered to the East India Company the right of conducting foreign policy, declaring war or making peace when they accepted the Subsidiary alliance. The States entered into direct relation with the Crown in 1858, and in 1861 Canning issued *Sanads* of adoption to all the Indian States. The Viceroy, however, stated in 1860 that the *Sanads* did not "debar the Government of India from stepping in to set right such serious abuses in a Native Government as may threaten any part of the country with anarchy or disturbance, nor from assuming temporary charge of a Native State when there shall be sufficient reason to do so. This has long been the practice." "The Crown of England stood forward the unquestioned ruler and paramount power in all India," declared Canning in a *Darbar* in 1862, "and was for the

Relation  
with the  
Crown

first time brought face to face with its feudatories." As feudal overlord the British Indian Government assumed the right to recognize succession, to approve of the appointment of Ministers of important States, as well as the right to remove or depose the Princes. In 1875, the Gaikwar of Baroda was tried on the charge of attempting to poison the British Resident, and finally deposed on the charge of maladministration. The Government have also intervened in recent years in the affairs of Alwar, Jhabua, Tonk, Kalat, Nabha, Indore and Mewad. By usage or convention, the Government of India have exercised the right of installing Princes on *gaddis* administering the State during the minority of the ruler, interfering in case of gross misrule and settling disputes between rulers and their jagirdars.

Each state has the right to manage its own internal affairs, subject to the undefined right of the Crown's Representative to intervene. It can raise taxes, including import and export duties. Eight States have their own mints for coining rupees and some others can only strike copper coins. Fifteen States have their own postal departments. The British Resident or other Agent usually exercises a good deal of influence in the administration of the State. The State usually delegates or cedes to British Cantonments, British Civil Stations. Railways running through the States, and the •Residency, jurisdiction over servants and dependents and over European subjects and other Europeans. In other cases, the jurisdiction of the State is limited and the residuary jurisdiction is exercised by the Agent of the Crown. In a few States representative institutions have been set up but the characteristic feature of all of them is the personal rule of the Prince and his control over legislation and judicial administration.

The States have a common organisation of their own, known as the Chamber of Princes, created by Royal Proclamation on the 8th February, 1921. The Chamber consists of 109 Princes who are members in their own rights besides twelve other representing 127 rulers of other States. The Viceroy is the President of the Chamber. The Chamber elects its own Chancellor, Pro-Chancellor and a Standing Committee of seven members. The function of the Chamber is deliberative and advisory. The Standing Committee advises the Viceroy on matters referred to it by him, and proposes for his consideration "other questions affecting Indian States generally or which are of concern either to the States as a whole or to British India and the States in common." The resolutions passed by the Chamber of Princes are not binding on the Princes. In February, 1928 the Chamber passed resolutions urging on the Princes the need of establishing a

Internal  
administra-  
tion

Chamber of  
Princes

definite code of law guaranteeing liberty of persons and safety of property administered by a judiciary independent of the executive, and the settlement, upon a reasonable basis, of the purely personal expenditure of a ruler as distinguished from the public charges of administration. Only in some of the progressive States these much needed reforms have been carried out.

## II. Genesis of the Federal Scheme

In February, 1924, Sir Malcolm Hailey foreshadowed a Federation of some sort in a speech before the Legislative Assembly, where he asked. "Is Dominion Self-government to be confined to British India only, or is it to be extended to the Indian States?" The Indian Princes were alarmed at the prospect of being drawn into a Federation with the Provinces in British India, whereby the Federal Government might impair the so-called internal sovereignty of the States and exercise some kind of control directly on their subjects. When the appointment of the Indian Statutory Commission was announced in November 1927, the Princes demanded that any further change in the Constitution of British India should not be made without due regard being paid to their wrongs and without suggesting the means to secure joint consultation between the Indian States and British India in matters of common concern. The Secretary of State for India appointed the Indian States Committee with Sir Harcourt Butler as Chairman to report upon the relationship between the Paramount Power and the Indian States and to enquire into the financial and economic relations between British India and the States. The Princes engaged Sir Leslie Scott as their counsel and the latter formulated the proposition that the relation between the Princes and the Crown is in the nature of contracts between sovereigns—the Prince and the Crown—not the Company or the Government of British India. In British India, the Congress took the lead in convening an All Parties' Conference, to which the Nehru Committee presided over by Pandit Motilal Nehru reported in August, 1928 on the principles of which the future Constitution of India was to be based. The Committee stated that: "If the Indian States would be willing to join such a Federation, after realizing the full implications of the federal idea, we shall heartily welcome their decision and do all that lies in our power to secure to them the full enjoyment of their rights and privileges." But the Nehru Committee vigorously combated the idea that the relation of the Princes is of a personal nature with the Crown, and not with the British India Government.

The protests of the Nehru Committee did not produce any effect. The Butler Committee presented to Parliament their report in April, 1929, in which they laid down "that the Viceroy, not the Governor-General-in-Council should in future be the Agent of the Crown in its relations with the Princes; that important matters of dispute between the States themselves, between the States and the Paramount Power, and between the States and British India should be referred to an independent committee for advice; and that the treaties, engagements and Sanads have been made with the Crown and that the relationship between the Paramount Power and the Princes should not be transferred, without agreement of the latter, to a new government in British India responsible to an Indian Legislature." Sir William Holdsworth, the distinguished jurist and a member of the Butler Committee wrote in the *Law Quarterly Review* (October, 1930), that Paramountcy is only a part of the prerogative of the Crown, and that Paramountcy of the Crown is not assignable to anybody as it is of a personal nature. The Paramount Power has been defined by the Butler Committee "as the Crown acting through the Secretary of State for India and the Governor-General in Council who are responsible to the Parliament of Great Britain." Thus the ultimate responsibility is to the King and the House of Lords and the House of Commons acting together, and not to the King in his personal capacity. "The British Parliament," observes Mr. K. K. Bhattacharyya, Reader in Law at the University of Allahabad, "would be perfectly justified in handing over the whole content of Paramountcy to the Federal Ministry of India, unreservedly, without involving itself in any constitutional impropriety or illegality, making the Federal Ministry the final authority for its exercise." Such a legal opinion, however, has very little practical value in the present circumstances, because neither the Princes would agree to accept such a position nor has the Indian National Congress made any such demand.

The Simon Commission looked forward to the ultimate establishment of the Federation, but they did not make any definite recommendation for the Federation of the British Indian Provinces with the Indian States. The Government of India in their Despatch, dated September 20, 1930, issued on the eve of the first Round Table Conference, stated: "A Federation of all-India is still a distant ideal and the form which it will take cannot now be decided." At the first Round Table Conference, the nine ruling Princes, who attended it, declared themselves in favour of an Indian Federation. Henceforth, it became rather an easy task to formulate a scheme of Federation, which took definite

The Butler  
Committee  
and the  
doctrine of  
Paramountcy

Need of an  
All-India  
Federation

shape in the White Paper issued in 1933. It is recognised by all shades of opinion that an all-India Federation must be established ; because it is not possible to ignore the obvious economic, and sociological affinities which exist between the people of British India and the subjects of the Indian States ; and that no artificial barrier can be effectively maintained between the two parts of India. The Joint Committee describe the economic ties between the States and British India in the following words : "Any imposition of internal indirect taxation in British India involves, with few exceptions, the conclusion of agreements with a number of States for concurrent taxation within their frontiers, or in default of such agreement, the establishment of some system of internal Customs duties—an impossible alternative, even if it were not precluded by the terms of the Crown's treaties with some States. Worse than this, India may be said even to lack a general Customs system uniformly applied throughout the sub-continent.....Moreover, a common company law for India, a common banking law, a common body of legislation on copy-right and trade-marks, a common system of communications, are alike impossible." The only solution of such problems is the establishment of the Federation. But the Federal scheme, as envisaged by the Government of India Act, 1935, has met with vigorous opposition from all sections of Indian population.

### III. Character of the Proposed Federation

The Government of India Act, 1935 provides that the Federation will be brought into existence by a Proclamation by His Majesty. But no such Proclamation will be made unless (i) an Address in that behalf has been presented to him by each House of Parliament ; and (ii) Rulers of States representing not less than half the aggregate population of the States and entitled to not less than half the seats allotted to the States in the Federal Upper Chamber have signified their desire to enter the Federation.

Conditions  
for inaugu-  
rating  
Federation

The British Indian Provinces are not given any choice in the matter of entering the Federation, whereas the Indian States may or may not enter it according to their sweet will. The basis of the Federation will be in one case compulsion and in another free will. The method of allotment of seats in the Federal Legislature is unfair to the Provinces. Of a maximum number of 260 seats allocated to the Council of States, 104 seats have been given to the States. In the Federal Assembly the States are to have 125 seats out of a total number of 375 seats. The population of

Grounds of  
opposition  
to the  
Federal  
Scheme

the Indian States is not more than one-fourth of the total population of India, but they are given two-fifths and one-third shares in the Upper and Lower Houses respectively of the Federal Legislative. The Federal Legislature will be a hybrid production. In the case of the British Indian Provinces the seats will be filled up by election on a democratic basis, but in the case of the States the representatives will be nominees of the Rulers. The principle of nomination by the Princes will in practice create a powerful Government *bloc* in both the Houses of the Federal Legislature. The Montague-Chelmsford Report condemned in strong terms the existence of such a nominated Government *bloc* in the Morley-Minto Constitution. It is apprehended by the Nationalists that such a *bloc* would be in a position to prevent all progressive measures. In the matter of Federal finance too, some injustice is going to be perpetrated on the Provinces. The States will be exempted from the payment of Income-tax, and also possibly the Corporation Tax, Succession Duty, Salt Tax. Taxes on the capital value of the assets, and Terminal Taxes. It is difficult to resist the temptation of quoting *in extenso* the brilliant summing up of the defects of the Federation from Prof. A. B. Keith's 'Constitutional History of India.' Prof. Keith observes: "For the federal scheme it is difficult to feel any satisfaction. The units of which it is composed are too disparate to be joined suitably together, and it is too obvious that on the British side the scheme is favoured in order to provide an element of pure conservatism in order to combat any dangerous elements of democracy contributed by British India. On the side of the rulers it is patent that their essential preoccupation is with the effort to secure immunity from pressure in regard to the improvement of the internal administration of their states. ....It is difficult to deny the justice of the contention in India that federation was largely evoked by the desire to evade the issue of extending responsible Government to the Central Government of British India. Moreover, the withholding of defence and external affairs from federal control, inevitable as the course is, renders the alleged concession of responsibility all but meaningless. Further, it is impossible to ignore the fact that, if the state representatives intervene in discussions of issues in which the Provinces are alone concerned, their action will be justly represented by the representatives of British India, while, if they do not, there may arise the spectacle of a Government which when the States intervene has a majority, only to fall into a minority when they abstain. Whether a Federation built on incoherent lines can operate successfully is wholly conjectural; if it does, it will probably be due to the virtual disappearance of responsibility and the assertion of the controlling power of the Governor-General

backed by the conservative elements of the States and of British India."

The views of Prof. Keith quoted above show that the States will derive all the benefits from joining the Federation, without incurring much new liability. But Prof. K. T. Shah's articles in the *Hindusthan Review* (January to June, 1937) show the other side of the picture. He argues that the financial strength of the federating States will be materially impaired (1) because of the obligations assumed by such of them as join without any reservations or limitations on their obligations on such items of federating as Debt, Defence, or Pensions; (2) and because the first charge or authority is given to the Federal Government to utilise certain preponderant productive sources of revenue for their own exclusive use. "The States are notoriously backward in what might be called the moral and material progress of the people under their charge. If, inspite of such considerations, they still join the Federation and cripple still further their financial resources—none too strong,—they will be jeopardising, not only their own local sovereignty, but also their chances of material progress within their jurisdiction—which alone could justify their continued existence as independent units."

New  
burdens  
on the  
Indian  
States

Should they  
join the  
Federation?

Objection on  
Communal  
ground

Many Muslim leaders in British India have condemned the Federal scheme on the ground that in the proposed Federal Legislature the Muslim members will be in a hopeless minority. The most important Muslim States are Hyderabad, Bhopal, Bhawalpur, Khairpur, Junagadh and Rampur and these will have in all 12 seats in the Council of States, and 21 seats in the Legislative Assembly. In the British India part of the Federal Legislature, Hindus who form more than 70 per cent of the population are given only 42 per cent of the seats in the Assembly; the Muslim leaders fear that the advantage they have secured in British Indian part of the Legislature, will be nullified to a great extent in the Federal Legislature as a whole, because the Hindus are in a majority in the Indian States also. The Moslem League in its Madras Session, April 1941, set itself definitely against the All-India Federation. "We do not want," said Mr. Jinnah in his presidential address, "under any circumstances a constitution of an All-India character with one Government at the Centre. We will never agree to that." This shows that the Moslem League has no interest in a United India or an Indian nation made up of many elements. Mr. Jinnah would not agree to any talk of settlement with the Congress, until and unless the latter agrees to the Pakistan Scheme. He cites the



example of Ireland in this connection. "The constitution of North and South Ireland was finally agreed upon after the principles and the basis of division was settled." This attitude makes it very difficult to promote the cause of Indian Nationalism and to bring about the contemplated federation.

Success of a Federation depends on the faith, good-will and willingness to co-operation of the federated units. In the case of the proposed Federation in India we find much ill-will, jealousy and animosity between the Provinces on the one hand and the States on the other.

#### IV. Position and Function of the Governor-General

The Governor-General is the keystone of the proposed fabric of the Indian Federation. The Constitution places a very heavy burden of responsibility on him. The influence of his personality on policy and administration of the country is very great. The Government of India Act makes detailed provision to give him both the general and financial power and the direct assistance necessary for the fulfilment of his obligations.

The Governor-General is himself appointed by His Majesty on the advice of the Ministers in the United Kingdom, and not, as in the Dominions, on the advice of the local Ministers. The offices of the Governor-General and the Viceroy, which have hitherto been combined in one, is theoretically separated by Section 3 of the Act. It is not the Governor-General but

His Majesty's Representative who will exercise "powers connected with the exercise of the functions of the Crown in its relations with Indian States." The Crown's Representative will be in a sense extraneous to the Federal Constitution. Though the two offices are thus separated in theory, they will be held at present by one and the same person. Many of the most characteristic Prerogative powers, such as the prerogative of mercy, or of the conferment of titles and decorations, or the grant of commissions in the Indian army, are attached to the office of the Governor-General as the head of the Federal Government.

The Governor-General is the head of the Federal Executive, whose authority extends to all matters for which the Federal Legislature is entitled to legislate, except as regards Railway matters, for which a separate authority is created by Section 181. Certain important features of the Federal Executive authority, to be exercised by the Governor-General are specially emphasized in sub-Section (1) of Section 8, namely, the raising of naval, military and air forces

Personality  
of the  
Governor-  
General

Governor-  
General and  
Viceroy

Army and  
tribal areas

in British India; the governance of all armed forces borne on the Indian Establishment; and powers in relation to tribal areas.

The executive authority of the Governor-General, however, is not limited exclusively by the list of subjects on which the Federal Legislature can legislate. He may have certain functions or powers assigned to him specifically at the time of his appointment, or in regard to the Reserved or Excluded Departments of Government, or in respect of certain Special Responsibilities.

His sphere  
of activity  
is wide

As head of the Federal Executive the Governor-General will in a great many cases be bound by the advice of his Ministers, who will be responsible to the Federal Legislature. But in other cases he will not be so bound. These cases are divided into two categories. He will act in some "in his discretion" and need not consult his Ministers thereon;

Relation  
with his  
Ministers

in others he will act "in the exercise of his individual judgment." Here he must consult his Ministers, but decide for himself. Broadly the distinction between the two categories is that "discretion" applies to matters which do not fall within the sphere of action of the Federal Ministers, while "individual judgment" applies to things which he within this sphere. When the Governor-General is acting either in his "discretion"

Dependence  
on the  
Secretary of  
State

or in "individual judgment", he is responsible to the Secretary of State for India. Discretion relates largely to matters within the departments of Defence, External Affairs, Ecclesiastical Affairs, and Tribal Areas—which are reserved to the Governor-General. But "the functions of the Governor-General with respect to the choosing and summoning and the dismissal of Ministers and with respect to the determination of their salaries shall be exercised by him in his discretion."

His "individual judgment" covers, besides certain specific powers so exercisable, the ground of his "Special Responsibilities". He has the following special responsibilities:—(a) the prevention of any grave menace to the peace or tranquillity of India or any part thereof; (b) the safeguarding of the financial stability and credit of the Federal Government (excepting this all other special responsibilities are similar to those of the Governor), (c) the safeguarding

Special  
Responsibilities  
of the  
Governor-  
General

of the legitimate interests of minorities; (d) the securing to, and to the dependants of persons who are or have been members of the public services of any rights provided or preserved for them by or under this Act and the safeguarding of their legitimate interest; (e) the prevention of commercial discrimination; (f) the prevention of action which would subject goods of United Kingdom or Burnese origin imported into India to discriminatory or penal treatment; (g) the protection of the rights of any

Indian State and the rights and dignity of the Ruler thereof ; and (h) the securing that the due discharge of his functions with respect to matters with respect to which he is by or under the Act required to act in his discretion, or to exercise his individual judgment, is not prejudiced or impeded by any course of action taken with respect to any other matter.

In normal circumstances there will be joint consultation between the Governor-General, his statutory counsellors (who are his advisors in the Reserved Departments) and his Ministers. But in the exercise of any special responsibility the Governor-General is given the widest possible powers. He can over-ride ministerial advice, he can obtain all the money he needs, and he can secure legislation which the Legislature declines to pass. Thus, if his special responsibilities are too narrowly interpreted, they might destroy the possibility of responsible government.

The legislative powers of the Governor-General are similar to those of the Governor. When the Legislature is not in session his Ministers may advise him to promulgate such Ordinances as may be necessary for immediate urgency. But he may not promulgate without the King's instructions any Ordinance which will be inconsistent with the Act of Parliament, derogating from the powers of High Courts in a substantial degree or likely to violate the rules against commercial discrimination. Such Ordinances must forthwith be laid before the Legislature when it meets and last only for six weeks unless sooner disapproved by resolutions of both Chambers.

Where the exercise of discretion or individual judgment is involved, the Governor-General may issue an Ordinance, whose duration may not exceed six months, but which may be extended by a later Ordinance for another six months.

If at any time he feels he needs legislative provision to enable him to discharge his responsibilities he may enact a Bill as a Governor-General's Act or he may attach a draft Bill in a message to the Legislature and enact it after a month's delay and after taking into consideration any resolution passed.

Lastly, the Governor-General may issue a Proclamation in the event of a break-down of the Constitution. If he is satisfied that the Constitution can not be carried on, he may take to himself all or any of the powers vested in any Federal authority except the Federal Court ; or he may declare that all or some of his functions are to be exercised at his discretion. A proclamation of such emergency must be communicated to the Secretary of State and

operate only for six months, but Parliament can extend it by annual periods up to a total of three years.

No Bill to impose a tax, authorise borrowing or a guarantee, or impose a charge on federal revenue may be introduced without the assent of the Governor-General. The Governor-General has power to restore any grant refused or reduced by the Legislature.

His power  
over  
money bills

## V. The Federal Legislature

The Federal Legislature consists of two Houses, namely, the Council of State and the House of Assembly. The Council of State consists of 260 members, of whom 156 are representatives of British India. Of the British Indian members 6 will be nominated by the Governor-General at his discretion. There are 75 general seats and the Muhammadans have 49, Sikhs 4, women 6 and the Scheduled Castes 6 seats. These members will be directly elected by voters of high property qualifications or who have filled some distinguished public offices 1 Anglo-Indian, 7 European, and 2 Indian Christian representatives are chosen by members of each type in the Councils and Assemblies of the Provinces. Thus the 156 British Indian representatives will be chosen by three methods—nomination, direct election and indirect election.

Composition of the  
Council of  
State

The House of Assembly consists of 250 representatives of British India and 125 members for the States. The distribution of the British Indian seats in the Assembly is on a communal basis. The 86 Hindu seats, 19 of the Scheduled Caste, 6 Sikh seats, and 82 Muhammadan seats are to be filled up by the representatives of these communities in the Provincial Assemblies voting separately. Seats allotted to Europeans, Anglo-Indians, Indian Christians and women are to be filled by the representatives of these groups in the Provincial Assemblies. Persons to fill the seats allocated to representatives of commerce and industry, land-holders and representatives of labour are to be chosen by Chambers of Commerce, by landholders voting in territorial constituencies, and by labour organisations respectively.

Composition of the  
Federal  
Assembly

In both the Houses the States are free to arrange representation as they please. In the Lower House seats have been allocated to States roughly on the basis of population; but in the Upper House account has been taken of the dynastic salute and other factors. The effect is to give the smaller States, the majority of seats in

Representa-  
tion of  
Indian  
States

the Council of State. This is due to the fact that the smaller States are more conservative than the larger ones.

The Council is a permanent body, it being arranged that members shall sit for nine years, with periodic retire-  
**Duration of**      members shall sit for nine years, with periodic retire-  
**life of the**      ments at each three years, while the maximum duration  
**Council**      of the Assembly is five years.

The Governor-General may summon, prorogue, or dissolve  
**Annual**      at his discretion the Assembly, but annual sessions  
**session**      are required; he may require the attendance of  
**of the**      members in order to address them or to send  
**Assembly**      messages.

The powers of the two Houses are equal. The Council of  
 State has power to refuse its assent to any Bill, clause or grant  
 which has been accepted by the Lower House.  
**Relation**      All demands will be first considered by the Assembly  
**between the**      and subsequently by the Upper House, but the  
**two**      powers of each House in relation to any demand  
**Chambers**      is identical. In case of difference of opinion between the two  
 Houses or in case six months passes without acceptance of the  
 measure by the House to which it has come, the Governor-  
 General may on notification convene in the next session,  
 not earlier than six months after his notification,  
**Joint**      a joint-session at which the Bill may be passed by a  
**session**      majority of the members voting. If, however, the Bill  
 affects finance or any matter which concerns the discharge of  
 functions in his discretion or subject to his individual judgment,  
 the Governor-General may hold the joint session forthwith.  
 It is to be noted that in case of joint session the Princes  
 would command 36 per cent of voting strength of the combined  
 Chambers.

## VI. Limitations on the Powers of the Federal Legislature

The Federal Legislature will be able to exercise very little  
 control over the expenditure of the Central Government. The  
 following heads of expenditure are to be known as  
**Non-votable**      expenditure charged on the revenues of the Federation  
**items**      and are not to be submitted to the Federal Legislature :  
 (a) the salary and allowance of the Governor-General and other  
 expenditure relating to his office for which provision is required  
 to be made by Order in Council; (b) the sums payable to  
 His Majesty under this Act out of the revenues of the Federation  
 in respect of the expenses incurred in discharging the functions  
 of the Crown in its relations with Indian States.

These two items cannot even be discussed by the Legislature.  
 The following items may be discussed but not voted upon.

"Debt, Sinking Fund, Redemption and Loans charges or service of the Debt ; salaries and allowances of Ministers, Counsellors, Financial Adviser, Advocate-General, Chief Commissioners and staff of the Financial Adviser ; salaries, allowances and pensions of Federal Court Judges and pensions of other High Court Judges ; expenditure in connection with defence, foreign affairs, ecclesiastical affairs, tribal areas, and other Special Responsibilities of the Governor-General ; grants or payments to the States ; grants for the purpose of the administration of excluded areas ; judgment decrees or other awards of courts ; any other expenditure required by this or any act of the Federal Legislature to be so charged.

Non-votable  
items which  
can be  
discussed

All these, put together, will amount to nearly 80 per cent of the total recurring revenues of the Federation ; and the Legislature would have no right to vote on any and all of these items. Even on the remaining 20 per cent of the revenue the control of the Legislature is not absolute.

If the Chambers have not assented to any demand for a grant or have assented subject to a reduction of the amount specified therein, the Governor-General may, if in his opinion the refusal or reduction would affect the due discharge of any of his special responsibilities, include in the schedule such additional amount, if any, as the case may be, as appears to him necessary in order to enable him to discharge that responsibility. The schedule so authenticated will be laid before both the Houses, but will not be open to discussion or vote therein. Thus, besides the non-votable items, the Governor-General will have power to override the wishes of the Federal Legislature even in respect of a votable item of expenditure, if he considers this necessary for the due discharge of any of his special responsibilities. It may be pointed out that the Legislature's control over finance in a country is the real test of popular government in a country. Judged by this test, the new Constitution falls far short of being democratic.

The Federal  
Legislature  
has got no  
power over  
80 p. c.  
revenue

Sections 111 to 118 together with section 12(1)(e) and 52(1)(d) are intended to prevent administrative and legislative discrimination in India, chiefly against British trade, commerce, industry and shipping. One of the special responsibilities of the Governor-General will be "the prevention of action which would subject goods of the United Kingdom origin imported into India to discriminatory or penal treatment." "It is difficult," observes Prof. D. N. Banerjee, "to avoid the conclusion that the particular special responsibility conferred upon the Governor-General for the prevention of discrimination against British imports into India constitute a menace to what is commonly known as the Fiscal Autonomy Convention."

It has no  
power to  
make discrimi-  
natory  
laws

The Indian Legislature is forbidden to make any discrimination against British subjects domiciled in the U. K. or Burma and against companies incorporated under the laws of the U. K. or Burma. British companies are to be entitled to equality of treatment, on the basis of reciprocity, in respect of any grants or subsidies provided by the Federation or Provinces. "The grossest piece of injustice in the matter of commercial discrimination," observes Sir Phiroze C Sethna, "is perpetrated in the fact that they have not agreed to restrict our coastal shipping trade to the nationals for which we have been fighting for the last so many years."

Equality of  
treatment to  
British  
companies

## VII. The Division of Legislative Power

The Constitution Act has drawn a distinction of legislative power according to subjects. It has made (1) a list of subjects exclusively Federal, (2) a list of Provincial subjects, and (3) a list of concurrent powers. We have already described the Provincial subjects in the chapter on Provincial Autonomy. Now we shall describe the first and the third.

The Federal list includes : Armed forces ; Naval, Military, and Air force works ; External affairs, including the implementing of treaties and extradition ; Ecclesiastical affairs ; Currency, Coinage and Legal Tender ; Public Debt of the Federation ; Posts and Telegraphs, Telephone, Wireless, Broadcasting ; Federal public services ; Federal pensions ; Federal property ; Imperial Library ; Indian Museum, Imperial War Museum, Victoria Memorial, Benares Hindu University and Aligarh Muslim University ; Surveys ; Census ; Ancient and historical remains ; admission to and movements in India ; quarantine ; import and export ; Federal railways ; control of vessels ; maritime shipping and navigation ; Admiralty jurisdiction ; major ports ; fishing and fisheries beyond territorial waters ; aircraft and air navigation ; light-houses ; carriage of passengers and goods by sea or by air ; copyrights, inventions, designs, merchandise marks and trade-marks ; cheques, bills of exchange, promissory notes ; arms, firearms, ammunition ; explosives ; opium ; petroleum ; regulation of labour and safety in mines and oil fields ; trading corporations ; development of industry when declared federal by Act ; insurance ; banking ; elections to the Federal Legislature ; statistics ; offences against laws under powers given in the list ; and duties of customs, including export duties ; excise duties except on alcohol, narcotic and non-narcotic drugs ; and preparations containing these substances ; corporation tax ; and salt. The States acceding to the Federation are expected to accept all these subjects as applicable to themselves.

Three Lists

The Federal  
subjects

The States, at their option, may accept the following subjects :  
 taxation on income other than income from agricultural land ;  
 taxation on the capital of individuals or companies ;  
 duties in respect of succession to property other than agricultural land ; rates of stamp duties in respect of bills of exchange and other similar instruments, terminal  
 duties on goods or passengers carried by railways or by air ;  
 taxes on railway rates and freights ; state lotteries ; naturalisation ;  
 migration with India ; establishment of weight standards ;  
 jurisdiction of courts in respect of any federal powers ; and fees,  
 other than court fees

Subjects  
which the  
States may  
accept as  
Federal

Both the Federal Government and the Provinces may make laws on the following subjects : Criminal law and procedure ; civil procedure, evidence and oaths ; marriage and divorce ; infant and minors ; adoption ; wills, intestacy and succession save as regards agricultural lands ; transfer of property other than agricultural land ; registration of deeds and documents ; trusts and trustees ; contracts ; arbitration ; bankruptcy ; actionable wrongs ; professions ; newspapers and printing ; lunacy and mental deficiency ; poisons and dangerous drugs ; mechanically propelled boilers and vehicles ; prevention of cruelty to animals ; European vagrancy and criminal tribes ; and jurisdiction of courts in respect of matters in the list.

Concurrent  
jurisdiction

Law on the following subjects may be made by the Federal Legislature with prior consent of the Governor-General and these acts may confer the power to give directions to a Province : factories ; welfare of labour ; health insurance and invalidity and old age pensions ; trade unions ; industrial and labour disputes ; prevention of the extension into units of infectious or contagious diseases of men, plants or animals ; electricity ; the sanctioning of exhibition of cinematograph films ; inquiries and statistics for the purpose of any of the matters in this part of this List and fees regarding these, excluding fees taken in any court.

Laws requiring previous sanction of the Governor-General.

The residuary power in Canada belongs to the Federation ; and in the U. S. A. and Australia to the federating units. But in the Indian Federation the residuary power belongs to the Governor-General. He may proclaim an emergency in which the security of India is threatened, whether by war or internal disturbance, and in that case the Federal Legislature with his assent, at his discretion, may legislate on any Provincial subject with over-riding effect. In normal times any subject not included in the list or topic of taxation may, at his discretion, be assigned either to the Federation or the Provinces.

The residuary power belongs to the Governor-General

Important economic functions have been assigned to the



Federal, Provincial and State Governments, but no means has been provided for co-ordinating the economic activity of one centre of power with another. It is difficult to undertake any concerted measure of economic planning under such a division of subjects. Suppose the Provinces initiate measures for the improvement of agricultural classes, these may be offset by a protectionist policy followed by the Federation. Moreover, important restrictions are imposed on the economic activity of each centre of power by the provisions relating to the Reserve Bank, the Statutory Railway Authority and Commercial discrimination.

Lack of co-ordination in economic matters

### VIII. Federal Finance

The sources of revenue of the Federation may be divided into three heads, namely, Ordinary taxation, Extraordinary taxation, and revenue not derived from taxation.

Three sources of revenue

The Ordinary taxes may be divided into two heads again, those to which the States will be expected to contribute in normal times and those to which they will not be expected to do so. To the former category belongs Customs Duties of the Federal subjects; Export Duties of the Federal subjects; Excise Duties on commodities other than alcohol, opium, Indian hemp, narcotic and non-narcotic drugs, whether intended for human consumption or for use in medicinal and toilette preparations; Salt and Corporation Tax.\* The States will not be expected to contribute in normal times to the following: Taxes on income other than agricultural; Property Taxes, that is, taxes on capital value of individual's assets, or of companies, other than agricultural land; and taxes on the capital of companies.

Ordinary taxes in relation to States and Provinces

The whole or part of the proceeds of Salt duties, Federal Excise duties and Export duties may be distributed to the Provinces and States under Federal Act. According to the Niemeyer Report, 62½ per cent of Jute export duty are distributed to Bengal, Bihar, Assam and Orissa. As regards the Income-tax, the Niemeyer Report provides that the percentage of the proceeds to be distributed to Provinces should be fixed at 50 per cent. The amount of it to be retained under Section 138 (2) from this share should be "for a first period of 5 years, in each year,

Otto Nieme-  
yer's Report  
on allocation  
of revenues

\* Corporation tax is a tax on such part of the income of companies which is not subject to the application of legislation authorising deduction of the tax from payments of interest or dividends or representing a distribution of profits. It may not be levied in a State until ten years from Federation.

the whole of such amount as, together with any general budget receipts from the railways, will bring the Central Government's share in the divisible total up to Rs. 13 crores, whichever is less, and for a second period of 5 years, in the first year, five-sixth of the sum, if any, retained in the last year of the first period, decreasing by a further sixth of that sum in each of the succeeding years." In 1937-38 the amount of 83 lakhs and in 1938-39, 163 lakhs was distributed to the Provinces. In 1939-40 the distributable portion of Income-tax was 178 lakhs.

Extraordinary revenue, to which the States will be expected to contribute in times of financial stringency is Surcharge on Income tax. Before giving sanction to the introduction of a bill imposing such a surcharge the Governor-General is bound to satisfy himself that it is imperative having regard to possible economics and other sources of revenue. The extraordinary sources of revenue for which States will not be expected to contribute even in times of financial stringency are: Surcharges on Succession Duties; Surcharges on Terminal Taxes on goods or passengers carried by rail or air; and on taxes on railway freights and fares; and Surcharges on Stamp Duties in respect of Bills of Exchange, Cheques, Promissory Notes, Bills of lading, Letters of credit, Policies of Insurance, proxies and receipts. It is to be noted that the net proceeds of the normal tax (not surcharge) on account of succession duty, stamp duty and terminal taxes are distributable among the Provinces and federated States in such manner as Federal Act prescribes.

Extra-ordinary revenues

The following federal sources of revenue are not derived from taxation: Fees in respect of matters included in the Federal list; Profits (if any) on the operation of Federal Railways, Postal Services (including Postal Savings Banks), Mint and Currency, and profits (if any) from any other federal enterprise. Contributions to Paramount Power from federated or non-federated States.

Revenues not derived from taxation

In addition to the sources of revenue stated above, the Governor-General in his discretion may by public notification empower either the Federal or a Provincial Legislature to impose a tax not mentioned in any list (Section 104).

Governor-General's power to impose fresh taxes

When the Provinces begin to receive payments out of federal income-tax receipts, the Crown may remit to States accepting Federation over a period not exceeding twenty years' cash contributions, the amount of which would be determined in accordance with any privilege or immunity enjoyed by the State.

Contributions to States

Nearly 80 per cent of Federal revenue will be spent on the following heads, against which the sums spent in 1931-32 is mentioned within bracket : Military services (56 crores) ; Pensions and Superannuation Allowances (2.46 crores) ; Ecclesiastical Dept (30 lakhs) ; Political Department (1.64 crores) ; Frontier watch and ward (2.39 crores) ; Payment of Interest on various Debts (49 crores). In the budget of 1939-40, the total estimated income was 82.70 crores of rupees, of which customs was expected to contribute 40.1 crores, Central Excise 8.28 crores, Income tax 14.66 crores and Corporation Tax 1.38 crore. The total estimated expenditure of the Central Government was 82.65 crores of which Defence alone was estimated to cost 46.18 crores of rupees.

Expenses of  
the Federal  
Government

### IX. Federal Railway Authority

India's Railway system extends over more than 40,000 miles. The Railways have contributed to general revenues a huge sum amounting to 42 crores of rupees between 1924-25 and 1931-32. Owing to the depression, extravagant management and competition of motor buses, the railways failed to contribute their share for some years. Hence it was necessary to take steps for efficient control and management of railways. Direct governmental control has its dangers, in as much as it may give rise to extravagance, redtapism and corruption. The Government of India Act, therefore, provides for a statutory Railway Authority.

Federal  
Railway  
authority

With the advent of the Federal Government the executive authority of the Federation in respect of the regulation, construction, management, and operation of railways will be exercised by a Federal Railway Authority, consisting of seven persons. No less than three-sevenths of the members of this Authority will be appointed by the Governor-General at his discretion ; the remaining members will be appointed by the Governor-General with the advice of his Ministers.

Principle of  
constructing  
the  
Authority

The Government of India Act enjoins that the Authority shall act on business principles, due regard being paid by them to the interests of agriculture, industry, commerce, and the general public. They shall be guided in the discharge of their duties by such instructions on questions of policy as may be given to them by the Federal Government. If, however, any dispute should arise between the Federal Government and the Federal Railway Authority as to whether a question is or is not a question of policy, the

Functions of  
the Federal  
Railway  
Board

decision of the Governor-General in his discretion shall be final.

No person shall be qualified to be appointed a member of the Federal Railway Authority (a) unless he has had experience in commerce, industry, agriculture, finance, or administration, or (b) if he is or within the 12 months last preceding has been (i) a member of the Federal or any Provincial Legislature, (ii) in the service of the Crown in India; or (iii) a railway officer in India. At the head of the executive staff of the authority there shall be a Chief Commissioner of Railways, being a person with experience in railway administration, who shall be appointed by the Governor-General exercising his individual judgment after consultation with the authority. The Chief Railway Commissioner shall be assisted in the performance of his duties by a Financial Commissioner and by such additional Commissioners as the Authority, on the recommendation of the Chief Railway Commissioner, may appoint. Though not members of the Authority the Chief Railway Commissioner and Financial Commissioner will have the right to attend all the meetings of the Authority.

Composition  
of the  
Federal  
Railway  
Authority

A Railway Tribunal, presided over by a Judge of the Federal Court, and consisting of two other persons appointed by the Governor-General, will prohibit unfair and uneconomic competition and to try cases regarding rates, discrimination, etc. Provision is made for a railway fund to which receipts are to be paid, and from which expenses are to be met; any surplus which accrues will be shared with the government on the existing basis (the Railway convention), or according to a scheme to be prepared.

Railway  
cases

## X. The Federal Court

A Federal Court, being an essential element in a Federal Constitution, has been established in India. It consists of a Chief Justice and two Judges, who will hold office until the age of sixty-five, subject to removal by the king by sign-manual warrant in case of infirmity or misbehaviour if the Judicial Committee of the Privy Council so recommends. The Judges will hold office during good behaviour, and not, as is at present the case with Judges of the High Courts, at pleasure. The Judges will be appointed by the Crown. Among those eligible for Judgeship of the Federal Court are persons who have been for at least five years High Court Judges.\*

Judges of  
Federal  
Court

\*The Chief Justice of the Federal Court is Sir Maurice Gwyer (salary Rs. 7,000 p. m.), and the two other Judges are Mr. M. R. Jayakar and Sir Shah Mahamed Sulaman (now dead), Sir J. W. F. Beaumont, acting, both drawing Rs. 5,000 p. m. Sir B. L. Mitter has been appointed Advocate-General of India

**Cases to be referred to the Federal Court** The Governor-General has been empowered with the "discretion" to refer to the Federal Court for consideration "a question of law which is of such a nature and of such public importance that it is expedient to obtain the opinion of the Court upon it."

**Jurisdiction of the Court** The Federal Court has an Original as well as an Appellate Jurisdiction. It has an original jurisdiction in (i) any matter involving the interpretation of the Constitution Act or the determination of any rights or obligations arising thereunder, where the parties to the dispute are (a) the Federation and either a Province or a State, or (b) two Provinces or two States, or a Province and a State ; (ii) any matter involving the interpretation of, or arising under, any agreement entered into after the commencement of the Constitution Act between the Federation and a Federal Unit or between Federal Units, unless the agreement otherwise provides. In such cases it can only give a declaratory judgment.

**Appellate Jurisdiction of the Federal Court** The Federal Court can hear an appeal, on certificate by any High Court that any matter involving the interpretation of the Act or an Order in Council under it is involved, causes from such courts ; no direct appeal then lies to the Privy Council. Appeal also lies to the Federal Court from the High Court of a Federated State, if it is alleged that a question of law regarding the interpretation of the Act or an Order in Council under the Act has been wrongly decided ; the procedure is by way of case stated either on the initiative of the High Court or the Federal Court. Provision may also be made by Federal Act to extend the Appellate Jurisdiction in civil cases from Provincial High Courts

**Appeal to the Privy Council** The appeal to the Privy Council is preserved. From any decision of the Federal Court appeal to the Judicial Committee of the Privy Council may be made by the leave of that body or of the Court itself.

### Amendments to the Government of India Act, 1935

The second reading of the Government of India and Burma Miscellaneous Amendment Bill was passed in the House of Lords on the 7th December, 1939. Lord Zetland observed in moving the second reading of the Bill. It was proposed to place beyond doubt a distinction, which was always intended and should be drawn, between taxes on income on the one hand and taxes on professions, trades, callings, and employments on the other.

Taxes on income, other than agricultural incomes, were the Federal source of revenue, whereas taxes on professions, trades, callings and employments were the provincial source of revenue. It was never intended that taxes under these provincial heads should be imposed as to constitute income tax and to trespass upon the central field of revenue. The main purpose in view, when these headings were included in the Provincial list, was to keep alive the right which the Provincial Governments exercised, after empowering local authorities, such as municipalities and district boards, to levy rates for local purposes which were commonly described as taxes. It was of course characteristic of these taxes that their incidence upon an individual tax-payer was a very small one. Experience has shown, however, that it is impossible to levy taxes under these heads which in fact was nothing less than income tax in disguise, for some time ago the legislature of the United Provinces enacted a taxing Bill under heading 'Employments Tax', which was in fact nothing more than income tax. It would be imposed upon income concerned of all those who derived their income from employments, as a substantial graduated tax, which in respect of a large part of incomes concerned would have amounted as much as 10%. It was quite clear that this would have constituted a serious invasion on one of the most important sources of revenue assigned to the Federal Government, and it was equally clear that if it were to be permitted on a large scale, it would have the effect of seriously upsetting the balance between the Federal and Provincial fields of taxation. The effect of clause 2 would therefore be, by limiting the amount which might be levied upon any individual, in any one year under heading 'tax upon trades, professions, calling or employment' to a specified sum—which in the Bill was placed at Rs. 50 to restrict the tax to the character which it originally possessed and from where it was never intended that it should depart. While clause 2 of the Bill thus protected the central sources of revenue against invasion by the provinces, the clause performed a similar service for the provinces against the centre, for it secured to the Provincial Governments, taxes in motor vehicles, and also on the sale of consumption on the electricity, which there was a danger of the Central Government regarding as excise and therefore claiming it as a sort of general revenue.

The Bill reintroduced in the House of Lords was for the insertion of the following new clause—

142A. (1)—Notwithstanding anything in section 100 of this Act, no provincial law relating to taxes for the benefit of a province or of a municipality, district board, local board or other local authority therein in respect of professions, trades, callings

or employments shall be invalid on the ground that it relates to a tax on income (2) The total amount payable in respect of any one person to the province or to any one municipality, district board, local board, or other local authority in the province by way of taxes on professions, trades, callings and employments shall not, after the 31st day of March, 1939 exceed Rs 50 per annum. Provided that if in the financial year ending with that date there was in force in the case of any province or any such municipality, board or authority a tax on professions, trades, callings or employments the rate, or the maximum rate, of which exceeds Rs.50 per annum, the proceeding provisions of this sub-section shall, unless for the time being provision to the contrary is made by a law of the Federal Legislature, have effect in relation to that province, municipality, board or authority as if for the reference to fifty rupees per annum, there was substituted a reference to that rate or maximum rate, or such lower rate, if any (being a rate greater than Rs.50 per annum) as may for the time being be fixed by a law of the Federal Legislature and any law of the Federal Legislature may for any of the purposes of this proviso be made either generally or in relation to any specified provinces, municipalities, boards or authorities. (3) The fact that the provincial legislature has power to make laws as aforesaid with respect to taxes on professions, trades, callings and employments shall not be construed as limiting, in relation to professions, trades, callings and employments, the generality of the entry in the Federal Legislative List relating to taxes on income.

The Bill also provides for the insertion in the Federal Legislative List of the following:—"54A The matters specified in the proviso to sub-section (2) of section 142A of this Act as matters with respect to which provision may be made by laws of the Federal Legislature." For paragraph 46 of the Provincial Legislative List, there shall be substituted the following:—"46. Taxes on professions, trades, callings and employments subject, however, to the provisions of section 142A of this Act". The existing entry reads as follows: "46. Taxes on professions, trades, callings and employments."

In June, 1940, the Parliament passed another Amendment, according to which the Governor-General is empowered to take final decision in all matters, which under the Act require the sanction of the Secretary of State for India, in case a state of emergency is declared.

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## APPENDIX I

### Political speculations in ancient India

Political Science was assigned a high place in the cultural system in ancient India. Usanas, a predecessor of Kautilya, regarded Politics as the only science, but according to Kautilya the welfare of all other sciences depended on the well-being of Politics. Sukra says that a ruler who neglects the study of Dandaniti, or science of government, sinks like a leaky vessel.

There were two different schools of thought in ancient India regarding the origin of the State. Both of these schools are represented in the Mahabharata. According to the Vanaparvam of the epic, there was at first perfect peace and happiness among men; but later on errors crept into their mind, the distinction between right and wrong vanished, and wrath began to disturb human relations. The people approached Visnu for the redress of this state of lawlessness. The Lord created out of his own energy a son named Virajas on whom sovereignty was bestowed. This story points to the divine origin of the state. But the Santiparvam states that when the Golden Age degenerated in course of time into a period of lawless anarchy the people made a compact among themselves by which they provided that any one who was harsh, in speech, or violent in temper or who robbed others of their wealth or wife would be out-lawed and excommunicated. Later on Brahma nominated Manu as the King. This story refers to the contractual origin of the State and divine origin of Kingship.

All the ancient writers on Polity, from Kautilya to Sukra hold that the State consists of seven elements, namely.—(1) the Swamin or Lord, usually the King; (2) the Amatya or minister; (3) the Janapada or territory; (4) The Durga or fort; (5) Kosa or treasury; (6) Danda or army; and (7) Mitra or ally. Sukra compares the King to the head, the minister to eye, the ally to ear, the treasure to mouth, the army to mind, the fort to arms and the territory and the people to two legs of human body. According to Sukra, the King should like a father endow his subjects with good qualities, like a mother pardon offences and nourish the subjects like children; like teacher guide his subjects, like a brother take only his legal share of property, like a friend be the keeper of the subjects' lives, families, property and interests; like Kuvera bestow wealth and like Yama punish the wicked.

The King in ancient Indian theory had no absolute power. Arbitrary government was checked by the popular control over the selection of the King. Dasaratha called the chief persons



of cities and villages within his kingdom to an assembly and asked them whether they approved of the selection of Rama as heir-apparent. In the Mahabharata we find that the Bramhanas and the village elders prevented King Pratipa from designating Devapi as successor because the latter suffered from skin-disease. Jajati had to take the consent of the people in nominating Puru as his successor. Sometimes the people deposed an evil-minded despotic King, as the story of deposition of Bena shows. Moreover, the sanctity of the Dharma or Rule of Law and the moral influence of the Bramhanas were regarded as safeguards against the exercise of arbitrary power of the king.

In the Arthashastra of Kautalya we notice some form of State Socialism. The State owns a very large portion of land of the country ; the State has monopoly over forests, mines, salt, pearls and precious stones. The State is the largest employer of artisans. The textile factories of the State are enjoined to furnish employment to widows, crippled women and reclaimed prostitutes. The State regulates the rate of interest ; and the Superintendent of Commerce regulates the rate of profit by fixing the price of different commodities with reference to the outlay of capital, the interest thereon, the quantity manufactured, the amount of toll and the wages of labourers. Wholesale traders were allowed a five per cent profit on home-grown commodities and ten per cent profit on foreign goods.

## APPENDIX II

### Strength of Political Parties in the Provincial Assemblies

(The figure against the Province indicates the total number of seats in the Assembly)

|                        |     |
|------------------------|-----|
| (1) Assam              | 108 |
| Congress               | 32  |
| Independent Party      | 19  |
| Tribal etc.            | 4   |
| Constitutionalists     | 3   |
| The Assam United Party | 49  |

|   |     |
|---|-----|
| (2) Bengal                                      | 250 |
| Ministers belonging to different groups         | 11  |
| Coalition Party (Muslim League and Proja Party) | 94  |
| Scheduled Castes supporting Govt.               | 10  |
| Europeans                                       | 25  |
| Total number of Government supporters—          | 140 |

4 Anglo-Indians and 7 members of Nationalist Party usually support the Government

|                  |    |
|------------------|----|
| Congress Party   | 51 |
| Proja Party      | 21 |
| Scheduled Castes | 14 |
|                  | 86 |

|                             |     |
|-----------------------------|-----|
| (5) Bombay                  | 175 |
| Congress                    | 88  |
| Muslim League               | 26  |
| Independent Labour Party    | 14  |
| Progress Party              | 12  |
| Peasants and People's Party | 8   |
| Peasants and Workers' Party | 8   |
| Democratic Swaraj Party     | 5   |
| Independents                | 18  |
|                             | 86  |

|                           |     |
|---------------------------|-----|
| (6) Madras                | 215 |
| Congress                  | 162 |
| Justice Party             | 17  |
| Muslim League             | 18  |
| European Group            | 7   |
| National Democratic Party | 4   |
| Anglo-Indians             | 2   |
| Independents              | 9   |
|                           | 52  |

|                                   |     |
|-----------------------------------|-----|
| (3) Bihar                         | 152 |
| Congress                          | 98  |
| Bihar Nationalist Coalition Party | 25  |
| Muslim Independent Party          | 20  |
| Muslim League Members             | 4   |
| No Party                          | 3   |
|                                   | 52  |

|                     |     |
|---------------------|-----|
| (4) C. P. and Berar | 112 |
| Congress            | 71  |
| Independent Party   | 17  |
| United Party        | 5   |
| Muslim League       | 10  |
|                     | 32  |

|                                  |    |
|----------------------------------|----|
| (7) North-West Frontier Province | 50 |
| Govt. { Congress                 | 21 |
| Non-Congress                     | 4  |
|                                  | 25 |
| Muslim League                    | 12 |
| Hindu-Sikh Nationalist Party     | 4  |
| Central Nationalist Party        | 5  |
| No Party                         | 3  |
|                                  | 24 |

|            |    |
|------------|----|
| (8) Orissa | 60 |
| Congress   | 35 |

|                          |   |                      |       |                          |                    |       |
|--------------------------|---|----------------------|-------|--------------------------|--------------------|-------|
| Opposi-<br>tion          | { | National Party       | 18    | (10) Sind                | 60                 |       |
|                          |   | Independent Party    | 1     |                          | Europeans          | 3     |
|                          |   | All-Orissa United    |       | Govt.<br>suppor-<br>ters | Independent        | 2     |
|                          |   | Party                | 1     |                          | Muslim Ministerial |       |
|                          |   | No Party             | 9     |                          | Party              | 25    |
|                          |   |                      | <hr/> |                          | Hindu Independent  | 10    |
|                          |   |                      | 24    |                          | Party              | <hr/> |
|                          |   |                      |       |                          |                    | 40    |
| (9) The Punjab           |   | 175                  |       |                          |                    |       |
| Govt.<br>suppor-<br>ters | { | Unionist Party       | 97    | Opposi-<br>tion          | Congress           | 10    |
|                          |   | Khalsa National      |       |                          | Muslim League      | 8     |
|                          |   | Party                | 13    |                          | Independent        | 1     |
|                          |   | National Progressive |       |                          |                    | <hr/> |
|                          |   | Party                | 4     |                          |                    | 19    |
|                          |   |                      | <hr/> |                          |                    |       |
|                          |   |                      | 114   | (11) United Provinces    | 228                |       |
|                          |   |                      |       | Congress                 | 147                |       |
| Opposi-<br>tion          | { | Congress             | 39    | Opposi-<br>tion          | Muslim League      |       |
|                          |   | Ahrar Party          | 2     |                          | Party              | 86    |
|                          |   | Independent          | 19    |                          | Independent Party  | 24    |
|                          |   |                      | <hr/> |                          | No Party           | 21    |
|                          |   |                      | 60    |                          |                    | <hr/> |
|                          |   |                      |       |                          |                    | 81    |

## List of Authorities and Selected Works

The following list of authorities and of selected works which have been found useful by the author, is given here in the hope that it will assist readers who desire to make a detailed study of Political Science or of the government of any of the important States.

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# SUBJECTS FOR ESSAYS

## INTRODUCTION (PAGE 1)

1. Define the nature and scope of Political Science. How is it related to Ethics, Economics and Sociology? (Bombay 1986, '37)
2. What is the relation of Political Science with (a) History, (b) Economics and (c) Ethics? (Bombay 1941 ; Dacca 1935)
3. Indicate the connection between Politics and Economics from modern finance, trade and labour legislation. (Cal. U. 1918 Hons.)
4. Discuss the relation of Political Science to Sociology, History, Economics and International Law. (Patna 1932)
5. Discuss the relation of Political Science with Economics and Jurisprudence. How far is Politics both a science and an art? (Bombay 1935)
6. "History without Political Science has no fruit and Political Science without History has no root." Discuss this statement. (Cal. U. 1933)
7. What do you understand by the term of 'Historical Method'? State briefly the chief contributions of at least one writer of the Historical School. (All. U. 1934)
8. How is Political Science related to History? (Punjab 1938)
9. Define "Political Science" and distinguish it from "Politics" and "Political Philosophy". Is Political Science really a Science? (Punjab 1937)

## CHAPTER I (PAGE 12)

1. Discuss the theory that the State is not identical with the Nation. What do you understand by a 'National State,' and 'the principle of nationality'? (Cal. U. 1925)
2. Define Nation and Nationality. What are the basic elements of Nationality? Is any one of them absolutely essential? (Punjab 1936)
3. What are the essential attributes of a State? Distinguish between State, Nation, Society and Government. (Bombay 1936)
4. Examine the influence of geographical factors on Political development. Illustrate your answer by reference to Indian conditions. (Bombay 1936)
5. Describe the political, physical and spiritual bases of the State. (Cal. U. 1925 Hons)
6. Define an "organism". Indicate the exact implications of the Organic theory of the State. Does it mean that the State resembles an organism in all points? How is the relation between the state and the individual defined by the Organic theory? (Cal. 1924, '33 ; All. U. 1931)
7. Estimate the value of the Organic theory of the State to students of Political Science. (Madras 1937)
8. Discuss (a) the organic theory of the state, and (b) the evolutionary theory of the origin of the state. (Bombay 1935)
9. Distinguish between Society, State and Government. (All. U. 1930)
10. Trace the growth of the ideal of nationalism in modern age. (All. U. 1931)
11. "A nation is not necessarily a state any more than a state is neces-



sarily a nation." Explain the meaning of this statement and clearly differentiate nation and nationality from Statehood. (All. U. 1984)

12. Discuss the problems arising from the existing minorities in a State. What are the different methods of solving them? (Patna 1984)

13. What are the essential factors that contribute to the development of Nationalism in a country? To what extent do you think they exist in India. (Cal. U. 1985)

14. What is meant by the Organismic Theory of the State? How far is the theory sound? (Cal. U. 1985)

15. What is meant by the organismic theory of the state? How far is this theory a satisfactory explanation of the nature of the State? (Cal. U. 1940)

16. How do you define a State? Do the following come under your definition of a state: (a) Hyderabad Deccan, (b) New York, (c) the League of Nations? Give reasons for your answer. (Cal. U. 1986)

17. What are the rights of nationalities and to what extent are they sustainable? (Madras 1985)

18. 'One nation, one state'. Is this a sound ideal? (Madras 1984)

19. State the factors which have assisted in the formation of democratic national States. (Rangoon 1988)

20. Distinguish between State and Society. (Rangoon 1988)

21. Discuss the merits and demerits of nationalism as a political ideal. (Madras 1987)

22. What are the essential elements of nationality? How far can present-day India be said to possess them? (Bombay 1985)

23. What are the forces that tend to create a nation? How far are these forces operative in this country to-day? (Cal. U. 1987)

24. What is meant by Government? To what extent does the authority of Government ultimately rest on force? (Cal. U. 1988)

## CHAPTER II (PAGE 38)

1. Discuss the evolutionary theory of the origin of the State. (Bombay 1941)

2. State and discuss Hobbes's view of the origin and nature of the State. (Bombay 1928; All. U. 1982)

3. Discuss the general features of the evolution of the modern State. (Bombay 1927)

4. Can you prove that the State is a historical growth? (Rangoon 1989)

5. Critically examine the Social Contract theory of the Origin of the State. Is the theory entirely valueless? (Cal. U. 1981, '82, '87)

6. "The State is an association for rendering public service." Discuss the remark in the light of the Organic and Social Contract theories. (Bombay 1988)

7. Carefully examine the doctrine of Social Contract. How far does it furnish the true explanation of the origin of the State? (Punjab 1987)

8. Criticize the Social Contract theory of the origin of the State. (Cal. U. 1941)

9. Examine the value of the Social Contract theory as propounded by Hobbes and Locke. What are the reasons for its disappearance to-day? (Nagpur 1985; Bombay 1986; Punjab 1984)

10. Discuss the practical importance of the Social Contract theory in actual Political development. (Cal. U. 1929)
11. Briefly describe the organisation of patriarchal society, and show in what respects it differs from modern political society. (Madras 1937)
12. Examine Maine's Patriarchal theory in the light of the researches of McLennan and others. (Punjab 1935)
13. How far is it true to say that the origin of the State lies in 'force' ? (Punjab 1936 ; All. U. '38)
14. Discuss the underlying tenets of the theory of the divine right of kings. In what sense was it the child of circumstances ? (All. U. 1930, 1933)
15. Explain the theory of Social Contract as interpreted by its leading exponents. How far do you find its implications present in the modern federal constitutions. (Patna 1934)
16. State and criticise the Social Contract theory as an historical or rational explanation of the origin of the State. (Madras 1936)
17. What differences do you observe in 'the state of nature', as described by Hobbes, Locke, and Rousseau ? (Madras 1935)
18. State briefly the various theories of the origin of the State with which you are acquainted, and consider the elements of truth in each of them. (Madras 1934)
19. What important features have characterised the evolution of the State ? Do you think that the nation state is the final term in the process of political evolution ? (Bombay 1938)
20. Which theory of the Origin of the State do you favour and why ? (Punjab 1935)
21. Indicate the general features of state development. (Dacca 1935)
22. Carefully examine the theory of Social Contract and Popular Sovereignty as expounded by Rousseau. (Punjab 1935)
23. Trace the process by which primitive tribal communities have been developed into modern political communities. (Punjab 1934)
24. What was the Hindu conception of the State ? Mention the chief theories about its origin given by Hindu writers. (Benares 1930)

### CHAPTER III (PAGE 54)

1. 'Sovereignty is the original, absolute, unlimited power over the individual subject and over all associations of subjects.' Explain and discuss. (Madras 1937)
2. What is meant by Sovereignty ? Is it absolute, or are there any limitations upon the exercise of Sovereignty ? (Punjab 1936)
3. Discuss the relative soundness regarding the location of sovereign power (a) in the people, (b) in constitution-making organ. (c) in law-making organ. (Cal. U. 1920 Hons.)
4. Define the nature of political sovereignty. What modifications, if any, has the concept of political sovereignty undergone in recent times ? (Bombay 1936)
5. Explain clearly the following concepts.—(a) legal sovereignty, (b) political sovereignty, and (c) popular sovereignty. (Dacca 1935)
6. Discuss Austin's Theory of Sovereignty. (All. U. 1930 ; Bombay 1928, '38 ; Punjab 1937)

7. Examine the legalist conception of sovereignty in the light of modern political developments. (Bombay 1980 ; Punjab 1985)
8. Give an account of the Pluralistic attacks on the theory of Sovereignty. (Patna 1982)
9. Discuss briefly the recent changes in the conception of sovereignty. (Cal. U. 1981)
10. Some writers reject the distinction between legal and political sovereignty on the ground that it seems to recognise a dual sovereignty in the state. Comment. (Cal. U. Hons. 1925)
11. Explain clearly who should exercise political sovereignty. (Rangoon 1988)
12. Clearly bring out the distinction between Legal and Political Sovereignty. Illustrate this distinction by reference to England. (Cal. U. 1941)
13. What are the characteristics of Sovereignty ; when we speak of "limited sovereignty", do we understand physical or legal limitations ? (Cal. U. Hons. 1928)
14. Give briefly the history of the doctrine of Sovereignty. (All. U. 1984)
15. Briefly explain Austin's theory of sovereignty and the objections to which it is open to day. (Madras 1984, '86)
16. Write short notes on :—(a) Popular Sovereignty, (b) Rights of Nationality, (c) Pluralistic theory of the State. (Bombay 1985)
17. Trace the evolution of the theory of Sovereignty. Is the modern State a sovereign State ? Give reasons. (Bombay 1985)
18. Examine the objections to the theory that Sovereignty lies with the body which has power (legally) to make any law it wishes. (Bombay 1987)

#### CHAPTER IV (PAGE 73)

- \* 1. "A law is a command which obliges a person or persons to a course of conduct". Comment on this definition considering particularly the cases of (a) customary law, (b) equity, (c) international law. (Cal U. 1980)
2. Discuss the propriety of the use of the word "law" in connection with the international regulations. (Bombay 1921)
3. Consider the relation of law to liberty. (Bombay 1928)
4. "Law is both a mirror of conceptions and active force. It exercises both an ethical and a physical compulsion." Explain. (Cal. U. 1980 Hons.)
5. Distinguish between the spheres of Law and Morality and show the relation that exists between them. (Cal. U. 1982 Hons.)
6. Is International Law enforceable like positive municipal law ? If not, in what sense is it called law ? (Cal. U. Hons 1929)
7. Define law. Differentiate, as to origin, content and sanction, positive laws from (a) laws of nature, (b) moral laws, (c) social laws, (d) religious laws and (e) the bye-laws of a municipality. (Dacca 1988)
8. Discuss the nature and sources of law. (Cal. U. 1982, '85)
9. Argue the case for and against the introduction of a system of administrative law in India. (I. C. S. 1933)
10. "Statutory orders and the growth of administrative law are the two great dangers to democracy." Explain and illustrate this statement. What proposals have been made to counteract these dangers ? (I. C. S 1984)
11. How does the Rule of Law protect the liberty of the subject ? Can the system of administrative law as it obtains in France do this ? (Madras 1980)

12. What is law ? What are its sources ? Does "Law exercise both an ethical and a physical compulsion" ? (Nagpur 1934)
13. Give an outline of the history and content of International law. How far is it correct to say that during the last few years the concept of International law has received a severe set-back ? (Bombay 1938)
14. Write notes on :  
 Administrative Law Courts, (Bombay 1937)  
 Rule of Law (Bombay 1935)
15. What is law ? How does it differ from ethics ? Examine the following statement : "There is a common legal conscience in mankind." (Cal. U. 1938)
16. Trace the history and discuss the sources of International Law. (Bombay 1941)
17. What is the nature of International Law ? To what extent does it constitute a limitation upon the sovereignty of a State ? (Cal. U. 1940)

### CHAPTER V (PAGE 90)

1. State what you understand by liberty and discuss the difficulties pertaining to the realisation of liberty in democratic countries. (Cal. U. 1930)
2. Estimate the importance of freedom of speech and discussion. State how it is secured in various modern constitutions and discuss how far it should be interfered with in time of war. How would you secure this freedom in the future constitution of Swaraj India ? (Cal. U. 1929)
3. Explain the value of the ideal of liberty and distinguish between civil and political liberty. (Dacca 1935)
4. How has the conception of liberty varied at different times and amongst different peoples ? (Cal. U. 1928)
5. "Liberty is absence of restraint." Discuss. (All. U. 1932)
6. Criticise the doctrine of natural right. How does the conception of the fundamental rights of the individual in some of the modern constitutions differ from it ? (Patna 1934)
7. To what extent, in your opinion, can constitutional safeguards be guarantees of individual liberty ? (I. C. S. 1933)
8. What do you understand by "Liberty" and how can it be secured ? (Nagpur 1934)
9. What in your opinion, constitutes the justification, sanction and content of civil liberty ? To what extent does the realisation of civil liberty depend upon economic equality ? (Bombay 1938)
10. Explain the term Liberty and justify the remark that Sovereignty and Liberty, far from being contradictory, are correlative terms. (Bombay 1941)
11. Discuss the statement that "modern theory tends to under-value the idea of political liberty." (Rangoon 1938)

### CHAPTER VI (PAGE 103)

1. Distinguish between Civil and Political rights. Enumerate some of the obligations of a citizen. (Cal. U. 1941)
2. Explain carefully the rights and duties of citizenship. (Cal. U. 1928)
3. What do you understand by a citizen ? In what ways is the position of a citizen superior to that of an alien ? What important differences concerning the acquisition of citizenship exist in the laws of various states ? (Cal. U. 1930)

4. Trace the historical circumstances which led to the rise of the nation state in Europe. (Madras 1935)
5. What were the rights and duties of citizenship in Athens and Rome ? How do they differ from those of modern citizenship ? (Madras 1931)
6. "Civic liberty is not absence of restraint but an opportunity for self-realisation". Comment upon this statement in the light of negative and positive versions of individual liberty. (Bombay 1936)
7. Distinguish between civil and political liberty, and indicate the content of civil liberty. (Bombay 1937)
8. What in your opinion, constitutes the justification, sanction and content of civil liberty ? To what extent does the realisation of civil liberty depend upon economic equality ? (Bombay 1938)
9. "Rights and duties are two aspects of the same thing." Discuss. (Punjab 1938)
10. How far are liberty and equality complementary ideals ? (Andhra 1938)
11. "We cannot say that the rights of the individual are constant ; they are obviously relative to time and place." Comment. (Andhra 1939)
12. "Rights are not the creatures of law but its condition precedent. They are that which law is seeking to realize." (Bombay 1941)

## CHAPTER VII (PAGE 117)

1. Define "constitution". Why is it necessary for a federal government to have a written constitution ? What is the greatest weakness of a written constitution ? (Cal. U. 1928 ; Dacca 1935)
2. What do you mean by the 'Constitution' of a country ? How does a written constitution grow ? (Cal. U. 1940)
3. What is meant by the constitution of a country ? State constitutional changes can be effected in England, France and the U. S. A. (Cal. U. 1932)
4. Account for the vogue of written constitutions in recent times. What inferences do you draw from them about the fundamental rights and principles which a written constitution should safeguard ? (I. C. S. 1934)
5. Describe and illustrate the different methods of constitutional amendment. (Madras 1934)
6. Distinguish between a "rigid" and a "flexible" constitution, and describe the merits and demerits of each. Explain how the distinction between the two is one of degree and not of kind. (Nagpur 1934 ; Dacca 1935)
7. Explain how constitutional amendments may be made in England, France, and the U. S. A. (Cal. U. 1935)
8. Discuss Aristotle's classification of the State. 'The classification of constitutions made by Aristotle, Montesquieu and Rousseau must now be regarded as obsolete.' Why ? Suggest a classification in harmony with modern conditions. (Bombay 1935, Rangoon 1939)
9. What is a documentary constitution ? Illustrate from the history of States, the purposes for which such constitutions have been created. (Rangoon 1938)
10. What are the respective merits and demerits of written and unwritten constitutions ? (Bombay 1936)
11. "The distinction between States with written and those with unwritten constitutions is an illusory basis of division. Examine this statement. (Cal. U. 1937)

12. 'The vital point in a constitution is its method of amendment. Explain the statement, giving reasons for your answer. (Dacca 1935)

### CHAPTER VIII (PAGE 124)

1. What important practical difficulties follow from the distinction between a written and an unwritten constitution ? (Patna 1924)
2. Examine—Aristotle's classification of States has been the cause of much confusion from a failure to discriminate between forms of state and forms of government. (Cal. U. 1926)
3. What does Aristotle mean by Polity ? What place in Aristotle's theory does it occupy in relation to other forms of government, and to his ideal state ? (Cal. U. Hons 1928)
4. Distinguish between the Federal and Unitary State. State what you regard as the peculiar features of the new federal constitution of India. (Bombay 1936)
5. Draw up a list of Federal States now in existence. Choose one of them and describe its chief features. (Rangoon 1938)
6. Compare the Hindu theory of the King's origin with the European theories of the Divine Right of Kings. (Nagpur 1937)
7. "The best test of the success of a state system is the length of life which it can secure for the state. The republican system of India, as a class, proved very successful in securing longevity. (Jayaswal) (Nagpur 1937)
8. On what principles should states be classified ? (Punjab 1938)
9. Discuss with special reference to India the conditions which favour a federal rather than a unitary system of government. (Bombay 1941)

### CHAPTER IX (PAGE 134)

1. What are the essential conditions for the successful working of democratic government ? How far are these conditions present in India ? (I. C. S. 1935)
2. What do you mean by democracy ? Whatever may be the weaknesses of democracy, and they undoubtedly exist, it seems destined to become universal. Discuss. (Cal. U. 1936)
3. Describe and illustrate the characteristic features of Greek democracy. (Madras 1936)
4. "Rome is a remarkable example of a community which advanced a long way on the road to democracy, but never achieved it." Explain and discuss. (Madras 1934)
5. "While democracy is said to be the only form of government which is suitable for civilised people, most of the civilised nations of to-day have undemocratic governments." Account for this paradox. (Bombay 1938)
6. Estimate the extent to which Mill's analysis of representative government was valid in his own days and in ours. (Nagpur 1937)
7. Distinguish between direct and indirect democracy. (Punjab 1938)
8. State the principal arguments in favour of democracy. How do you account for its present eclipse ? (Bombay 1941)

### CHAPTER X (PAGE 152)

1. How does a Federal Union differ from (a) an alliance, (b) a confederation, and (c) a unitary state ? (Cal. U. 1940)

2. What are the distinguishing marks of federal union and how does it differ from a federation and a unitary form of government ? (Cal. U. 1932, '85)
3. Compare and contrast a federation with a confederation. There are two main types of federation ; which kind of federation is suited for India ?  
(Cal. U. 1931 ; Patna 1925 ; Rangoon 1939)
4. What are the conditions necessary to the formation of a Federal union ? Why should the federal constitution be written ?  
(Cal. U. 1925)
5. Discuss the strength and weakness of Federation. How far is federation suited to India ?  
(Bombay 1931)
6. Describe the position of the communities in a federation (Cal. U. 1926)
7. Explain the nature and characteristics of a federal union. Under what conditions can a federal union come into existence ? (Cal. U. 1930 Hons.)
8. Explain the principles on which powers are distributed in a federation between the federal state and the constituent units.  
(Patna 1934)
9. In what respects does the unitary form of Government differ from the federal ?  
(Cal. U. 1936)
10. What circumstances have contributed to the emergence of Federations ? Illustrate your answer by reference to past or present federations.  
(Bombay 1936)
11. Outline any one scheme of federal government known to you and point out how it has dealt with the main problems that a system of federal government has to face.  
(Bombay 1937)
12. "Federations are essentially composite states and as such they involve some distribution of sovereignty between the Federal and State governments". Discuss.  
(Bombay 1938)
13. Discuss and illustrate the conditions necessary for the success of a federal union. How far do they exist in India ?  
(Cal. U. 1937)
14. Compare and contrast the Canadian and American forms of federation, estimating the success of each.  
(Punjab 1938)
15. Draw up a list of Federal States now in existence. Choose one of them and describe its chief features.  
(Rangoon 1938)

## CHAPTER XI (PAGE 166)

1. Describe the constitution and functions of the Permanent Court of International Justice.  
(Nagpur 1935)
2. Summarize the attempts of the League of Nations to reduce national armaments. How far have these been successful ?  
(Nagpur 1936)
3. "The value of the League of Nations will depend in large measure upon the recognition by the nations of the importance of group development within the all-embracing circle of the League." Explain and discuss.  
(Nagpur 1936)
4. Give a short account of the non-political activities of the League of Nations.  
(Patna 1934)
5. Consider the extent to which the League of Nations has curtailed State sovereignty and national independence.  
(I. C. S. 1934)
6. Write a short essay on the constitution, functions and work of the League of Nations.  
(I. C. S. 1934)
7. In what conditions does a Federal State come into existence ? Do they obtain in India at the present moment ?  
(Madras 1929)

8. Distinguish between the various classes of mandates and describe the method and extent of the control exercised by the League of Nations over the mandatory power.  
(Nagpur 1935)

9. Describe one purpose, organisation and activities of the League of Nations.  
(Bombay 1935)

10. Describe the constitution and functions of the League of Nations. Discuss its effectiveness.  
(Bombay 1937)

## CHAPTER XII (PAGE 177)

1. Show that the rigid separation of powers is unpracticable and undesirable.  
(Cal. U. 1924, '32 ; Dacca 1935)

2. Examine the theory of separation of Powers. How far is it translated into practice in Great Britain, France, Germany and the U. S. A. ?  
(All. U. 1930 ; Cal. U. 1918, '19 Hons. ; Madras 1936 ; Nagpur 1934)

3. Analyse the constitution of the U. S. A. in the light of the theory of the Separation of Powers. Is it responsible for any friction in the actual working of the constitution ?  
(Patna 1934)

4. State and discuss Montesquieu's theory of Separation of Powers. How far is this theory a satisfactory doctrine of liberty ?  
(Bombay 1935)

5. State and discuss the theory of Separation of Powers. How do you account for the fact that most States have latterly weakened in their support of this theory ?  
(Bombay 1938)

6. Explain and criticise the theory of Separation of Powers. To what extent has it found application in the Indian constitution ?  
(Bombay 1941)

7. Explain carefully the statement that the systems of 'Separation of Powers' and 'Check and Balance' prevent chaos of authority and unify governmental powers.  
(Cal. U. 1941)

## \*CHAPTER XIII (PAGE 183)

1. Describe the working and utility of Referendum and Initiative. What do you mean by 'Recall' ?  
(Patna 1932 ; Madras 1936)

2. Explain briefly the claims of (a) functional and (b) territorial representation in the modern state.  
(Cal. U. 1931)

3. What should be the proper relation between the representative and his constituency in a democratic state ? Should he be bound by the instruction of his constituents.  
(Cal. U. 1934)

4. What arguments of political theory would you use in supporting or rejecting a Communal representation.  
(Cal. U. 1931)

5. Discuss the case for and against the Upper Chamber in the legislature. Give illustrations.  
(Patna 1934)

6. Describe the extent to which the Referendum, the Initiative, and the Recall are used in different countries.  
(I. C. S. 1934)

7. Summarise and discuss the means adopted in different States to protect the interest of minorities.  
(I. C. S. 1934)

8. Give an account of the legislature in one of the following States and describe what functions it undertakes :—Great Britain, United States of America, Italy, Australia, Burma.  
(Rangoon 1938)

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\*Some questions on Chapter XIV are also included in it.



9. Compare and contrast the composition and working of Second Chambers in Japan and the U. S. A. (Benares 1939)
10. Compare the use of the committee system in the English House of Commons and the House of Representatives of the U. S. A. How far does it obtain in Indian legislatures ? (Madras 1930)
11. What is Referendum ? What is its place in the Swiss Constitution ? Why has it not been introduced in England ? (Madras 1935)
12. What are the advantages claimed for the bicameral system of legislature ? How far are they real ? (Cal. U. 1935)
13. Write explanatory notes on the following :—(a) Communal representation, (b) Proportional Representation, (c) Indirect election, (d) the Initiative and Referendum. (Cal. U. 1936)
14. What do you think are the proper functions of a Second Chamber ? (Punjab 1938)
15. What is Proportional Representation ? Do you think it is suitable to Indian conditions ? (Punjab 1938)
16. Distinguish between direct and indirect democracy. (Punjab 1938)
17. Give the case for and against a single-chamber legislature. (Punjab 1937)
18. Describe the working of the Committee system in the French Chamber of Deputies and the American Congress. (Madras 1937)
19. Distinguish between Initiative, Referendum and Plebiscite. Indicate the merits and defects of direct legislation. (Bombay 1937)
20. "While majorities have an inherent right to rule, minorities have an equally solemn right to be heard." Comment upon this statement and estimate the extent to which the principal forms of minority representation fulfil their purpose. (Bombay 1938)
21. What devices are now in use or can be suggested to expedite parliamentary business in democratic states ? (Bombay 1938)

## CHAPTER XIV (PAGE 200)

1. 'How do modern States endeavour to prevent the possible tyranny of the majority ? (Bombay 1941)
2. With special reference to Burma, consider the value of the single-member constituencies. (Rangoon 1938)
3. Explain the essential features of proportional representation. Advance arguments for and against it. (Rangoon 1939)
4. Explain and estimate the value of each of the following constitutional instruments : Plebiscite, Referendum, Popular initiative. (Rangoon 1939)
5. What do you understand by a 'Minority' ? How would you safeguard the interests of a minority in the state ? (Dacca 1935)
6. Explain some of the constitutional devices that have been designed to bring the electorate into closer touch with their representatives. (Dacca 1938)
7. Mention some of the rights of minorities. What measures would you propose for the purpose of safeguarding minority rights ? (Dacca 1937)
8. Discuss the value of separate electorates in the political evolution of Modern India. (Benares 1930)
9. Describe the Baden System of proportional representation introduced by the Weimar Constitution in the German Republic. (Benares 1939)

10. What main schemes have been proposed for representing minorities on elected bodies? Comment on these schemes. (Bombay 1937)

### CHAPTER XV (PAGE 228)

1. Describe the nature, forms and functions of the executive. (Bombay 1941)
2. Describe the causes of instability of the French Ministry. (Cal. U. 1932 Hons.)
3. What is meant by Cabinet Government? Describe the organization of a Cabinet in Burma during 1937. (Rangoon 1938)
4. Compare and contrast the constitutional position and powers of the Japanese Emperor, Swiss President, and the German Fuehrer and Chancellor. (Benares 1939)
5. Explain clearly the relations which exist between the executive and the legislature in Great Britain and contrast them with those which exist in the U. S. A. (Patna 1925; Cal. U. 1920)
6. "A Presidential government may not have a President, and a country which has a President may not have a Presidential government". Discuss. (Bombay 1930)
7. Give a general outline of the executive functions of Government. Are there any general principles underlying the exercise of these functions? (Cal. U. 1919, '22, '23)
8. Describe the position and powers of the Head of the Federal executive in the United States of America. (Cal. U. 1935)
9. Compare and contrast the powers of the President of the U. S. A. with that of the President of the French Republic. (Madras 1936)
10. How is the efficiency of executive administration secured under the system of parliamentary executive? (Madras 1930)
11. Account for the weakness of French Ministries. What methods would you suggest to strengthen them? (Punjab 1938)
12. Assess the relative merits of Parliamentary and Presidential Executives. What are their main defects? (Bombay 1938)

### CHAPTER XVI (PAGE 242)

1. What is the best method of selecting (a) a Prime Minister, (b) a Judge, (c) a Chairman of a Public Service Commission, (d) a Senator? (Rangoon 1938)
2. Describe the main features of the Indian Civil Service—its methods of appointment, its relations to the legislature and the executive under the present dual system of provincial government. Does the present system contribute to good government? Give reasons. (Benares 1930)

### CHAPTER XVII (PAGE 250)

1. Discuss the means which you would like to be adopted in order to ensure the independence of the judiciary in democracy. (Bombay 1931)
2. Compare the position and organization of the Federal judiciary in the U. S. A. and Switzerland. (Alh. U. 1932)
3. Compare the judiciary of the U. S. A. with that of England. (Cal. U. 1932 Hons.)
4. Describe the functions and jurisdiction of the French Administrative Courts and discuss their merits and demerits. (Cal. U. 1931 Hons.)

5. What are the functions and jurisdiction of the English House of Lords as the highest court of justice ? (Cal. U. 1925)

6. What are the functions and jurisdiction of the French Administrative Courts ? Discuss the advantages of, and objections to, these courts. (Cal. U. 1924)

7. Discuss the merits and demerits of the Rule of Law and Administrative Law in the light of English and French experience. (Madras 1935)

8. State exactly the difference between the position of the American Judiciary and that of the British Judiciary in respect of the interpretation of laws. How far has the Judiciary proved to be a good protector of the constitution in the United States ? (Nagpur 1937)

9. How is the independence of the Judiciary secured in Great Britain and France ? Discuss the question with special reference to methods of appointment and tenure of office. (Benares 1930)

### CHAPTER XVIII (PAGE 257)

1. Discuss the merits and defects of the Party System. (Cal. U. 1940)

2. Discuss the necessity and justification of the Party System in a democracy. (Cal. U. 1941)

3. Discuss the advantages and disadvantages of the Party System. How far would it suit India ? (Bombay 1931, Rangoon 1939)

4. "Far from being in conflict with the theory of democratic government, party government is the only thing which renders it feasible." Explain. (Bombay 1930)

5. Judge the value of the Party and the Group Systems from their actual working in England and France. What sort of a Party System is growing up in India and why ? (Bombay 1929)

6. "Party System in France has not been remarkably successful." Why not ? (Cal. U. 1924, '21)

7. Discuss the respective merits of the Group System and the Party System.

8. Discuss the uses and abuses of the Party System. What are the essential conditions for its proper working ? (Patna 1934 ; Nagpur 1934)

9. Compare and contrast the organization and working of the Party System in England and the United States of America. (Madras 1935)

10. Compare the advantages and drawbacks of the two-Party System with those of the multiple-Party System. (Madras 1935)

11. Is a two-Party System essential for parliamentary government ? Discuss, with special reference to the position in France and Great Britain. (Patna 1939)

12. "Party government has been extolled as the most natural and condemned as the most unnatural of political phenomena." What is your own view ? (Bombay 1941)

13. What is a political party ? Describe the work which such organizations perform, giving illustrations from either France, or U. S. A. or Burma. (Rangoon 1938)

14. Describe the formation and organization of parties in India in recent years. Examine the growth of these parties from the point of view of a successful working of Parliamentary Government in India. Do you think the Indian system will approximate to the British type or the continental type ? Give reasons. (Patna 1939)

## CHAPTER XIX (PAGE 275)

1. What are the broad lines of distinction between Central and Local Governments ? Give some account of Local Government in England and France with reference to (a) local areas, (b) organization and relation to the Central Government. (Bombay 1930)

2. What are the functions of Local Government and how should the funds be provided that are necessary for the carrying out of these functions ? In your discussion refer to the Local taxation methods in use in England and in the U. S. A. (Bombay 1930)

3. Compare the systems of local administration in Germany and the U. S. A. (All. U. 1932)

4. What are the distinctive functions of Local Government in a modern State ? How do you account for the growing control exercised by the Central Government over the working of these institutions ? (Patna 1934)

5. Examine the principles and working of Local Government in England, and compare it with that of the U. S. A. (Patna 1935, '39)

6. 'In France Local Government assumes an entirely different character from that found in America and England.' Amplify. (Punjab 1937)

## CHAPTER XX (PAGE 288)

1. What are the constitutional implications of the phrase 'Dominion Status' in the British Empire ? How is a common Imperial policy in foreign affairs promoted under such states ? (All. U. 1932)

2. Describe the place which the self-governing colonies occupy in the empire. What is the extent of their autonomy ? In what respects are the subjects to the control of the British Parliament ? (Cal. U. 1928)

3. Explain the chief provisions of the Statute of Westminster, 1931. (Dacca 1937)

4. Show to what extent the autonomy of the British Dominions is real. (Dacca 1938)

5. 'Dominion Status is now a concept which varies from Dominion to Dominion'. Explain and illustrate this from the cases of Canada and South Africa. (Dacca 1939)

6. Describe the position of the Governor-General in a Dominion. (Dacca 1937)

7. To what extent are the different classes of Britain's overseas possessions or colonies dependent on her ? What are the reasons for the variation in the degree of their dependence ? (Bombay 1937)

8. Write a short review of British Colonial policy from the American war of Independence with special reference to the devolution of power to the British dependencies. (I. C. S. 1933)

9. Explain the relations between England and the Dominions. (Madras 1934)

## CHAPTER XXI (PAGE 298)

1. Do you agree with the view that every extension of the province of government is a further restriction of individual liberty ? (Bombay 1939)

2. Discuss the grounds upon which is based the Individualistic theory of the functions of Governments. (Bombay 1930)

3. Describe the essential features of the Individualistic and Socialistic functions of Government. Point out the errors in both. (Cal. U. 1914, '25)

4. Give a short account of modern Socialism and illustrate the Socialistic tendency in modern legislation. (Cal. U. 1918, Hons. '18)
5. How far should the states initiate social reform ? (Cal. U. 1931)
6. 'The function of the State is to secure the common ends which recommend themselves to the general will and which cannot be secured without compulsion'. Discuss. (Patna 1938)
7. On what principles of political theory can you justify (a) removal of mass illiteracy by the State, (b) protection of home industries, (c) 'Prohibition'. (Patna 1939)
8. "The State is a partnership in all science ; a partnership in all art ; a partnership in every virtue and in all perfection".—(Burke). How far would you agree with this description of the ends of the state ? (Madras 1929)
9. "After all, the State is not itself an end but merely the means to an end." Discuss. (Bombay 1941)
10. What is socialism ? Enumerate some of the socialistic functions of the governments of India and Bengal. (Dacca 1935)
11. "The state is a joint-stock protection company for mutual assistance." Discuss. (Madras 1936)
12. What do you consider to be the proper limits and functions of the state ? Should the Indian government undertake social legislation ? (Madras 1935)
13. Distinguish between the essential and optional functions of Government. How far can you justify the distinction on abstract principles ? (Bombay 1936)
14. "The State is an association for rendering public service". Discuss the remark in the light of the Organic and Social Contract theories. (Bombay 1938)
15. What, in your opinion, are the proper ends of the State ? Discuss the question in the light of the recent extension of State activity. (Bombay 1938)
16. Bring out clearly the resemblances and differences between Individualism and Idealism as regards the proper sphere of State action. (Nagpur 1937)
17. What in your opinion is the proper sphere of a modern state ? (Cal. U. 1936)
18. "The sole duty of Government is to protect the individual from violence and fraud". Discuss. (Cal. U. 1937)
19. Should there be any limits to State action ? If so, where would you put the limits ? (Cal. U. 1938)
20. What are the functions of Government ? Which of them do you regard as essential ? (Punjab 1938)
21. State and Criticise the Individualism of Mill. (Punjab 1937)
22. Give a critical exposition of the Fascist and Nazi organization of the State. (Bombay 1937)

## CHAPTER XXII (PAGE 315)

1. Do you agree with the view that Socialism is the next step in democracy ? (Madras 1937)
2. What are the essential features of democracy ? Discuss its present position and prospects. (Bombay 1935)

3. In what way does economic inequality hamper the working of political democracy? (Bombay 1936)
4. Both Russian Communism and Italian Fascism claim that their organizations are much better suited for promoting social welfare than any form of democratic government can be. Examine this claim. (Nagpur 1937)
5. "Fascism is simply the transference of the ideals of action, of leadership, and of the team spirit from the realm of Athletics to that of Politics". Discuss. (Nagpur 1937)
6. Discuss the Socialists' case for the extension of the functions of Government. (Punjab 1937)
7. "Political equality is never real unless it is accompanied by virtual economic equality". Comment. (Andhra 1939)
8. Explain the merits and demerits of democracy and of dictatorship. (Dacca 1935)
9. Discuss the elements of strength and weakness of the democratic form of government. (Benares 1939)

### CHAPTER XXIII (PAGE 333)

1. Describe the main elements that go to make up the British Constitution, discussing the part that Conventions play in it. What are the sanctions behind them? (Patna 1939; Punjab 1935)
2. What is meant by the phrase "Conventions of the Constitution"? Give some examples of constitutional Conventions and explain how they are enforced. (Punjab 1938)
3. "There are many subtle distinctions in the vernacular of the British Government, but none more vital, as Gladstone once remarked, than the distinction between the King and the Crown". Explain this distinction, and discuss fully the value of the institution of monarchy in Great Britain. (Nagpur 1937)
4. Discuss the position of the Crown in the English Constitution in relation to (i) domestic matters, and (ii) imperial affairs. Has it undergone any change on account of abdication of Edward VIII? (Patna 1938; Cal. U. 1936)
5. Discuss the position and powers of the Crown in the English Constitution, with special reference to legislation and the dissolution of Parliament. (Cal. U. 1940)
6. Contrast the salient features of the Constitutions of Great Britain and the United States. (Cal. U. 1941)
7. "He reigns, but does not govern". How far is it true of the King of England? (Madras 1929)
8. Summarise the mutual relation between the Executive, the Legislature and the Judicial bodies in England and in the United States. (Cal. U. 1934)
9. Discuss the position of the Cabinet in England. To what extent has the Cabinet usurped the function of the Parliament? (Cal. U. 1928, '37)
10. What do you understand by ministerial responsibility. Show how it works in England. (Madras 1936)
11. Explain the powers and functions of the British Cabinet. In what matters in your opinion, are its general policy and working open to criticism? What measures would you suggest to remedy the existing defects? (Patna 1939)

12. "The English Prime Minister knows the leader of the Opposition better than he does his own wife".—(Bernard Shaw). Comment. Can you say that the English Party System makes for absolute dictatorship of the party in power, which ruthlessly disregards the Opposition? (Punjab 1935)

13. "The first legislative chamber is the Cabinet." Examine the statement with regard to England. (Andhra 1937)

14. To what extent does the Crown serve as a bond of political unity in the British Empire? (Andhra 1936)

15. Illustrate the special value of the House of Commons as a training ground for Cabinet Ministers. (Andhra 1938)

16. Give a comparative estimate of the ways in which the power of veto over legislation is exercised by the King of England and the Presidents of France and the U. S. A. (Dacca 1939)

## CHAPTER XXIV (PAGE 365)

1. The English House of Commons makes the ministry, but the ministry can unmake the House. Explain this and contrast it with the relation in which the French Ministry is held to the French Lower House.

(Cal. U. 1928, '82)

2. Enumerate and briefly describe the privileges of the House of Commons in Britain. (Cal. U. 1980, '41)

3. Write a short note on the functions and powers of the Speaker. How is his political neutrality secured? (Cal. U. 1980; Patna 1984)

4. State the provisions of the Parliament Act of 1911. What has been the effect of the Act on the position of the House of Lords?

(Cal. U. 1926, '84)

5. Trace the progress of public bill from its introduction to its enactment. Discuss the political importance of each stage. (Patna 1984)

6. Describe the peculiar features of the system of private bill legislation in England and point out its merits and defects. (Dacca 1935)

7. Criticise the statement that the British Cabinet is the master of Parliament. (I. C. S. 1933)

8. To what extent and by what methods do the House of Commons and the Cabinet in England control each other? (I. C. S. 1935)

9. "The House of Lords can be eliminated but not reformed". Is this true? Give reasons. (Madras 1937)

10. Compare and contrast the Committee System of the House of Commons and Chamber of Deputies. (Punjab 1938)

11. What is a Money Bill? Describe the stages through which it has to pass to become an Act in England. (Punjab 1936)

12. Describe the composition and functions of the House of Lords.

(Cal. U. 1937)

13. 'Financially, the work of the House of Commons is rather supervision than direction; and its real usefulness consists in securing publicity and criticism rather than in controlling expenditure.' Elucidate this statement. (Dacca 1935)

## CHAPTER XXV (PAGE 387)

1. Write a brief critical note on Delegated Legislation in Great Britain and its tendencies at the present day. (Patna 1939)

2. Account for the growing importance and influence of the Civil Service in Great Britain. Is it necessary to check this tendency? If so, on what grounds, and how? (Patna 1989)

3. Is there any reason to believe that the English Constitution is unequal to a major economic or foreign crisis to which it may be subject in the near future? If so, what adjustments are needed? What are its features which enable it to withstand such crises? (Patna 1988)

4. "The sheer quantity of work to be accomplished in the British House of Commons is overwhelming". How would you meet this difficulty? (I. C. S. 1935)

5. How far is it correct to say that the powers of the Permanent Civil Service in Great Britain have increased, are increasing, and ought to be diminished (Dacca 1989)

6. Is bureaucracy compatible with democracy? How would you guard against the evils of bureaucracy in the modern state? (Andhra 1989)

## CHAPTER XXVI (PAGE 406)

1. It has been held by some writers that Canada is not a true federation. Do you agree with this view? Give reasons for your answer. (Dacca 1985)

2. Explain how the legislative powers have been distributed between the Centre and the Provinces in the Dominion of Canada. (Dacca 1986)

3. Describe the composition and powers of the Central Legislature in Canada. (Dacca 1988)

4. Describe the distribution of powers between the Central Government and the Provincial Governments in Canada. (Dacca 1989)

5. From the example of Canada before you, explain the term 'Dominion Status'. How far is Canada a sovereign state? (Punjab 1987)

## CHAPTER XXVII (PAGE 423)

1. Why did the Canadian Provinces federate in the sixties while the Australian colonies remained mutually aloof, until the close of the 19th century? Indicate the main differences in the federal constitutions of the two countries. (I. C. S. 1935)

2. Describe the composition and powers of the Upper Chambers in the Dominions of the Empire. How are conflicts with the Lower Chamber avoided in Canada, Australia and South Africa? (Nagpur 1987)

## CHAPTER XXVIII (PAGE 430)

1. Give an outline of the present constitution of the Union of South Africa. (Dacca 1985)

2. Describe the position and powers of the Governor-General of South Africa. By whom, and on whose advice, is the Governor-General appointed in South Africa? (Dacca 1986)

3. Why did South Africa adopt a unitary instead of a federal type of organization? (Dacca 1987)

4. State how governmental powers have been distributed between the central and provincial governments in the Union of South Africa. (Dacca 1988)

5. Explain the nature of the South African Union. How far is it federal in character? (Dacca 1989)



6. "The Union of South Africa differs fundamentally from the federal arrangement of Canada." Amplify. (Nagpur 1934)

7. Briefly describe the composition and constitutional powers of the House of Assembly in the Union of South Africa. (Nagpur 1935)

### CHAPTER XXX (PAGE 439)

1. Describe the powers and functions of the Senate, Chamber of Deputies, President and the Cabinet in France. (Cal. U. 1930 Hons.)

2. Account for frequent changes of ministry in France. Is this instability a less serious evil there than it would be in other countries? (I. C. S. 1935)

3. Account for the large number of parties in French political life. Discuss whether it is better for the working of the Parliamentary system to have many parties or to have only two parties. (Bombay 1921)

4. Describe the working of the Committee System in the French Chamber of Deputies and the American Congress. (Madras 1937)

5. Explain the difference between the Cabinet and the Council of Ministers in France and examine the character of ministerial responsibility in that country. (Cal. U. 1938)

6. Account for the weakness of the French ministries. What method would you suggest to strengthen them? (Punjab 1938)

7. Discuss the constitutional relations between the two Houses of the French Parliament. (Dacca 1935)

8. Explain the system of 'Interpellations' in France and discuss how it affects the position of the Cabinet. (Dacca 1935)

### CHAPTER XXXI (PAGE 456)

1. Account for the relative success of direct government in Switzerland. (Patna 1939)

2. Explain the meaning of 'direct legislation' and elucidate the following remark: "It is in Switzerland, more than anywhere else, that direct legislation is in use". (Patna 1938)

3. Explain Referendum as it has been worked in Switzerland. Estimate its advantages and disadvantages. Consider how far its success in Switzerland may be due to special circumstances. (Bombay 1921)

4. It is believed that democratic institutions have worked more smoothly in Switzerland than in any other country. How do you explain this? (All. U. 1935)

5. "Real democracy is in operation." How far is this characterization true of the Swiss Constitution? (Madras 1937)

### CHAPTER XXXII (PAGE 464)

1. Discuss the view that the principle of judicial control of legislation makes the governmental system an "aristocracy of the robe." Examine its working in the U. S. A. (Andhra 1939; Punjab 1938)

2. Why is the Senate of the U. S. A. called the most powerful Second Chamber in the world? (I. C. S. 1935)

8. Describe the position of the President of the U. S. A. in theory and practice. Describe his powers in relation to Congress. (Patna 1939; Punjab 1938; Dacca 1935)

4. Describe and compare the position and powers of the President in the Constitutions of the U. S. A. and Germany. (Patna 1934)

5. Compare and contrast the position of the Senate in the U. S. A., France and Australia. (Madras 1937)

6. Discuss the relation of the Executive to the Legislature in the federal sphere in the U. S. A. Has the present arrangement any defects? (Cal. U. 1938)

7. If you were offered a seat in the Congress, would you choose the House of Representatives or the Senate? Explain the position of a member of each House, and give reasons for your choice. (Punjab 1938)

8. Examine the different agencies by which the Constitution of the United States has tried to keep pace with the economic and social needs of the country. (Andhra 1939)

9. Account for the strength and special importance of the Committees of Congress in the U. S. A. (Dacca 1935)

10. Contrast the salient features of the constitutions of Great Britain and the United States. (Cal. U. 1941)

### CHAPTER XXXIII (PAGE 478)

1. "German Upper House is much more truly a Council of States than is the Swiss." Elucidate the statement. (Madras 1928)

2. Describe the steps taken in the new German Constitution to give representation to economic interests. How far have the schemes been adopted and been adequate and beneficial? (I. C. S. 1934)

3. Discuss the scheme, as so far laid down, for the establishment of a "Corporate State" in Italy. (Madras 1930)

4. Describe the position of the German Chancellor in the Weimer Constitution. (All. U. 1935)

5. Describe briefly the Constitution of Fascist Italy and point out its significant features. (Patna 1939)

6. What are the principles of the Corporative State? (Andhra 1938)

7. "The Presidency of the German Republic (Weimer) is a compound which embodies certain features of both the American and the French Conceptions." Examine. (Andhra 1939)

8. Give a critical exposition of the Fascist and Nazi organization of the State. In your classification of States where would you place them? (Bombay 1937)

### CHAPTER XXXIV (PAGE 496)

1. Describe the salient features of the Constitution of Japan. (Patna 1939)

2. Write a critical note on the Constitution of Japan. How has its spirit been changing under the pressure of modern conditions? (Patna 1939)

### CHAPTER XXXV (PAGE 501)

1. Analyse the salient features of the Constitution of the Russian Socialist Soviet Republic. (Patna 1938)

2. Do you consider that the Soviet Constitution of Russia has succeeded? (I. C. S. 1934)

3. "A working theory of the state must, in fact, be conceived in administrative terms". Examine this statement in relation to the Governments of Russia and the U. S. A. (Andhra 1938)

## CHAPTER XXXVI (PAGE 511)

1. Explain and illustrate the nature of the difficulties that arose from the Regulating Act. How were they removed ? (Andhra 1984, '89)
2. Give an account of the Judicial arrangements at Bombay or Madras in the 17th century. What improvements were made by subsequent legislation up to the grant of the Diwani ? (Andhra 1989)
3. What were the important changes introduced by the Charter Act of 1833 in the Constitution of the East India Company and the system of Indian administration ? (Andhra 1989)
4. "The Morley-Minto reforms are the final outcome of the old conception which made the Government of India a benevolent despotism, which might as it saw fit for purposes of enlightenment consult the wishes of its subjects". Discuss. (Andhra 1988)
5. "The Constitution of 1919 as enacted and as operated effectively negated any real test of the capacity of Indian Ministers to work responsible government". Discuss. (Andhra 1987)
6. What do you understand by the "reserved" and "transferred" subjects ? How did the constitutional position of a Minister in an Indian Province differ from that of an Executive Councillor under the Montford Reforms ? (Punjab 1986)
7. "Concentration of the Judicial, Executive and Revenue powers in the hands of the same authorities is a necessary evil in India." Discuss. (Punjab 1986)
8. What were the salient features of the Indian Constitutional Reforms of 1909 ? In what respects are they considered defective or inadequate ? (Cal. U. 1924, '25)
9. "The Reforms of 1909 afforded no answer and could afford no answer to Indian political problems". Discuss. (Dacca 1985)
10. Compare the constitution and functions of the Legislative Assembly of India with those of the Council of State. (Dacca 1985 ; Cal. U. 1941)

## CHAPTER XXXVII (PAGE 531)

1. Sketch the history and discuss the main problems connected with communal representation in India. (Andhra 1984)
2. "The Act of 1935 does not introduce in the Provinces a system of limited monarchy but a system of limited ministry". Discuss. (Andhra 1989)
3. What difference does the Government of India Act 1935 make in the legislative and administrative control exercised by the Central Government over the Provinces ? (Andhra 1987)
4. Describe the salient features of the new Constitution of India. (Cal. U. 1987)
5. Discuss the position and powers of the Governor in relation to his Ministers under the present Constitution of India. (Cal. U. 1988, '40)
6. What is the position of a Minister in an Indian Province in relation to (a) the Chief Minister, (b) the Governor and (c) the Provincial Legislative Assembly ? (Punjab 1988)
7. Describe the position as regards the control exercised by the Government of India over Provincial Governments after the Reforms of 1919. (Punjab 1987)

8. "The new Constitution should as far as possible contain within itself provision for its own development"—(Simon Commission). Examine in the light of this principle the provisions of the Act of 1935. How do they compare with those of the Dominions? (Patna 1939)

9. Examine critically the working of Provincial Autonomy and show how far the principle of collective responsibility has been developed? (Patna 1939)

10. Analyse the constitution of the Bihar Legislative Council. How far has it served the purpose for which it was constituted? Are you in favour of its retention? (Patna 1939)

11. "The creation of a Second Chamber in India is a luxury, and serves no useful purpose either as instituted in connection with the Central Government, or as instituted, as is proposed, in connexion with Provincial Governments". Comment upon this view. (I. C. S. 1934)

12. "A Second Chamber is almost indispensable in a federation such as the United States is." Fully explain. (Cal. U. 1941)

13. Examine the extent of the financial powers possessed by Provincial Legislatures in India. (I. C. S. 1935)

14. Give a brief account of the system of electorates at present prevailing in India. (Cal. U. 1941)

## CHAPTER XXXVIII (PAGE 574)

1. To what extent did the Government of India Act of 1919 relax the control of the governments in India by the Secretary of State in Council? (Andhra 1939)

2. "The Civil Servant in India is the Government". Discuss how far this statement holds good after the introduction of responsible government. (Andhra 1938)

3. Examine the position and powers of the Secretary of State in Council in relation to the administration of India. (Cal. U. 1936)

4. Describe the constitution and powers of the Executive Council of the Governor-General of India. (Cal. U. 1936)

5. Examine the nature of popular control over the central revenue and expenditure in India. (Cal. U. 1937)

6. "In all vital matters, the policy for India is formulated not at Delhi, nor at Simla, but at Whitehall"—(Tej Bahadur Sapru). Discuss this and describe the relations between the Secretary of State and the Government of India. (Punjab 1937)

7. Give the nature and extent of financial control exercised by the Central Legislature in India. (Punjab 1936)

8. In what manner and to what extent is the authority of the Central Legislature in India in the way of law making, subordinate to that of the British Parliament? (Punjab 1936)

9. Discuss the position of the Secretary of State in the present Constitution. Describe in detail the machinery by which he can exercise his authority in the sphere which is still subject to his direction and control. (Patna 1938)

10. Compare the powers and functions of a Dominion Governor-General with that of the Governor-General of India. (Madras 1930, '36)

11. Compare the powers of the Indian Legislature with those of the British Parliament. (Madras 1934)

12. Examine clearly the relations of the Viceroy, Executive Council and Assembly of India. (Cal. U. 1931)

13. Describe the membership, term and powers of the Indian Legislature. How far has the Governor-General power to enact laws? (Cal. U. 1930)

### CHAPTER XXXIX (PAGE 587)

1. Describe the relations between the Paramount Power and the Indian States since 1858. How far will Paramountcy be affected by the entry of the States into the Federation? (Andhra 1938)

2. In what ways has the presence of the States complicated the problems of Federal finance in India? How far have the makers of the new Constitution succeeded in solving the problem of financial relation with the States? (Nagpur 1937)

3. Examine the nature of the legislative powers vested in the Governor-General by the Government of India Act, 1935. (Cal. U. 1938)

4. Discuss the nature and extent of the legislative powers of the Governor-General as provided for by the Government of India Act, 1935. (Cal. U. 1940)

5. What theoretical and practical objections can be urged against the proposed Indian Federation? What alternative organization would you suggest at the Centre? (Patna 1938)

6. What are the functions and powers of the Upper Chamber in the proposed Federation? Analyse its composition and give your opinion whether it will be a serious rival to the lower house. (Patna 1938)

7. "The scheme of Indian Federation is said to be a scheme for conferring Swaraj on the Viceroy and surrendering British India to the States." Do you agree with this view? What modifications would you suggest to make it acceptable to the Indian people? (Patna 1939)

8. Is the Presidential or Parliamentary type of Government more suitable to India? (Madras 1935)

9. In what ways does the proposed Indian Federation differ from the form of Federal Constitutions? Account for the differences you observe. (Andhra 1936)

10. Discuss the position and powers of the Governor-General and Crown Representative in India under the new constitutional arrangements. (Dacca 1939)

11. Write short notes on (a) Communal Award (b) Poona Pact (c) Fiscal Autonomy Convention (d) Instrument of Accession (e) Special Responsibilities of the Governor-General (f) Supplementary grant. (Dacca 1939)

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